中国与国际一级债务资本市场

实践报告

Practices and procedures in the Chinese and international primary debt capital markets

国际资本市场协会（ICMA）—中国银行间市场交易商协会 (NAFMII) 工作组
第六次中英经济财金对话

ICMA–NAFMII Working Group
6th UK–China Economic and Financial Dialogue

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I. 引言

2014 年中英经济财金对话中，中国国务院副总理马凯和英国财政大臣奥斯本一致认为，中英金融机构之间的进一步合作将有利于资本市场的发展，双方赞成建立一个联合工作组，由中国银行间市场交易商协会（**NAFMII**）和国际资本市场协会（**ICMA**）担任工作组主席。

工作组汇聚了中国和伦敦金融机构的专家，彼此分享关于业务流程、实践做法和市场基础设施建设等金融市场信息。同时，国际资本市场协会和交易商协会也感谢其他金融机构在起草和审阅本报告中做出的重要贡献。

工作组的首份报告旨在为政策制定者和市场从业人员勾勒出在跨境国际债务市场和境内中国银行间债券一级资本市场发行债券的方法。

本报告的分析涵盖了两大重要市场版块的债券发行：

- 国际投资级公开市场（除非另作说明，使用现行的欧式建档银团方式）
- 中国银行间市场（该市场债券新发行和交易量占境内市场份额的 90%）

本报告并未囊括全球市场中发行的所有债券和其他债务证券。本报告不涵盖单纯的本地债券市场，也不涵盖向美国投资者发行的国际债券。

本报告及其内容不构成对现行法规或市场惯例的官方陈述或定义性陈述。本报告表达的为参与撰写人员的个人意见和陈述，而非国际资本市场协会、交易商协会或其成员组织的官方意见。

ICMA–NAFMII 联合工作组将继续探索能够促进债务市场更加高效、更具活力、更有秩序的一般实践。ICMA 和 NAFMII 欢迎各界对我们的工作提出宝贵意见，进一步提升国际实践。

II. 摘要

债债务资本市场长期以来为公共和金融服务领域提供了稳定的融资平台，使公司能够在银行限制贷款时获得资金并向投资者提供有效的回报。公司通过可转让债务证券、股本、银行贷款等方式筹得资金，以进一步满足其业务发展和扩张需求。债券市场对政府保持可持续平衡增长、为基础设施项目提供资金以及应对气候变化也具有重要意义。

国际债券发行必须考虑多种可能与发行人、承销商或最终投资者相关的，在欧盟、美国和其他司法管辖区的各项法律法规及法院裁决。在过去的几十年里，市场操作正在朝着更有效、更合规交易的方向逐步演进。近期，快速发展的中国银行间债券市场相关规则也在继续发展，不但结合了中国资本市场发展的自身特点，也受到全球其他市场惯例的影响。

本报告侧重于债务一级市场（即债券在进入二级市场被投资者和交易商自由交易以前，首次向投资者发行的市场）的程序和惯例。分析涵盖了国际和中国债券市场中发行债券的三个重要方面：尽职调查、信息披露和簿记建档。

尽职调查

尽职调查是找出、加工和验证发行人要求向投资人提供的信息的过程，帮助投资者做出合理的投资决策。

在中国和国际债券市场中，尽职调查是发行程序的重要组成部分。尽职调查，在实践中是对发行人进行的一次彻底调查，确保对投资者披露信息的准确性和完整性。尽职调查涵盖了所有与投资发行人债券的决策有关的主题，包括发行人的法律和财务状况、业务经营、管理和策略。

市场实践方面，国际和中国资本市场的尽职调查的重要内容没有重大区别。在国际市场上，尽职调查的基本设计理念是避免不当销售或疏忽的责任，而中国体系则更多地基于投资者保护原则和对称信息原则。然而，中国市场的尽调动机已逐渐与国际市场接轨。实践中的一个明显区别在于，在中国明确要求进行持续尽职调查，而在国际市场上当投资者在一级市场购买债券时，已经有效终止了对发行人的尽调要求。

信息披露

国际和境内中国债券市场都按照“以信息披露为基础”的原则运行，重视信息披露的透明度，以使投资者能够作出合理的投资决策。

募集说明书中的披露在很大程度上反映了尽职调查过程中收集的信息，但通常也会包含一个独立的风险因素章节，以及债券特殊条款和条件细节。

国际发行通常需要对债券的条款和条件和投资者的权利做更详细的披露，而中国发行则要求对募集资金的用途做更详细的披露。由于国家政策原则的广泛性，国际和中国市场在披露的其他特定方面亦有些许不同，例如有关控制实体、关联方、工作安全和国家机密等方面的披露。

同时，中国和国际市场在要求每一方就募集说明书的准确性和完整性出具声明与保证，以及要求的潜在程度上也存在差异。

簿记建档

在债券发行中，“簿记建档”是承销商根据市场状况和投资者需求确定以什么价位发行债券的过程。

通常，国际市场的一级债务发行比中国具有更短的建档流程和更少的信息流动限制，仅受对内幕消息的通行法律框架的约束。

在中国市场上，发行人并不参与核心的建档程序，而在国际市场，发行人则可能更多地参与到簿记管理人对债券分配和定价的讨论中。

另一个主要区别是，中国市场中，建档过程相对透明，通过价格排序分配债券，类似于拍卖过程。而在国际市场上，债券的分配和定价更多取决于市场的微妙条件和银团管理人的专业经验和判断。

政策建议

通过国际和中国一级市场实践的比较分析，得出以下重要建议：

- 吸收国际法律和市场实践，考虑在中国市场针对不同类型的投资者（机构和零售）以及不同类型的发行人（成熟的的和少发型的）采用不同级别的信息披露要求。
- 推动中国市场尽职调查程序的规范化，特别是吸取债券发行过程中所涉各方在特定领域的专业知识。
- 进一步优化和合理化债务融资工具的簿记建档过程。同时，结合中国银行间市场的实践和经验，提高国际簿记建档流程的透明度。

III. 国际离岸和中国在岸一级市场概览

债券发行种类

根据发行方式不同，债券发行可以是公开发行或非公开发行，涉及一家银行或数家银行组成的银团，以拍卖或承销（在簿记建档或发行留档基础上）的方式，通过储架多次发行工具（比如 MTN 计划）或单次发行基础上进行。发行也可以根据规模（包括是否存在基准）、发行方和 / 或投资者的地理位置（包括国内发行、跨境发行、国际发行和新兴市场发行）、债券结构（常规债券、资产支持证券、附担保债券）和期限（商业票据、票据、债券）以及发行人信用状况（投资级、高收益）进行分类。以上排列可能涉及不同的法律、法规、基础设施和市场实践。

适用法律

在国际市场上，一笔单一交易可能涉及许多国家和地区的法律，取决于发行人所在地和债券分销所在地，以及其他因素。例如，在欧洲发行的发行人可能必须遵守欧盟的信息披露要求和法规。承销商和其他各方必须遵守英格兰和地方法域普通法下的内幕交易判例。证券交易所可能对上市债券有额外的要求。最后，国际债券发行合约（向美国发行的除外）通常会遵守英国法律或其他成熟的普通法法律（如香港法或新加坡法）。

国际债券发行一般须考虑美国的证券法律，从而允许向美国进行分销，或确保适用美国证券法律豁免注册登记的规定。尤其是，S 条例规定了对完全在美国以外发行的美国登记要求的例外情形；而 144A 规则则是当对美国的分销仅限于机构投资者时，可豁免美国注册登记要求的安全港。

中国债券市场比国际债券市场年轻，发展更为迅速。管辖中国债券发行的法规通常较国际市场更为详细和严格，而国际市场则更多地受惯例以及成熟、良好的实践操作驱动。

在中国，境内债券市场受中国法律管辖。对发行人而言最重要的法律是公司法，由国务院颁布，普遍管辖中国公司的设立和运营。在银行间债券市场，NAFMII 有权在发行程序、分配和披露上颁布更为详细的规则。

交易各方

每笔债券发行均涉及核心的几方，尽管有些时候同一实体也会担任超过一份职责。国际和中国发行中涉及到的关键方有：

- **发行人**：发行债券筹集资金的实体。国际和中国市场中的发行人可以为金融机构、非金融公司或政府实体。
- **担保人**：尽管并非每笔交易都存在担保人，许多债券发行交易仍配有一名担保人以提高债券信用水平。担

保人可以是发行人的关联方，也可以是第三方，例如开发银行，拥有为特定类型债券提供信贷支持的授权。由于担保人在债券发行下通常需要承担与发行人类似的义务，因此交易与发行人相关的许多方面（例如要约通函中的描述、审计师告慰函的保证和规定）将同时适用于担保人。

- **主承销商：**受发行人委托开展交易的银行。在国际和中国市场（留存或私募交易除外），主承销商也担任“账簿管理人”，负责向投资者安排债券分配的银行。在国际市场中，任何大型公开交易均需委任多家联席主承销商和联席账簿管理人，由他们组成所谓的银团。在中国，每笔债券交易会委任一名或两名主承销商；只有超短期融资券例外，需要多名联席主承销商。每笔交易只有一名主承销商牵头并担任账簿管理人。

- **副承销商：**银团中，不担任账簿管理人的银行称为副承销商。在国际市场中，主承销商和副承销商个别且连带地同意作为初始购买人认购债券，因此“承销”了债券发行，并确保发行人能够筹到资金（主承销商承销较大份额）。实际操作中，主承销商的主要价值是找到投资者竞标；承销商通常仅承担投资者在交易交割前最后数天内退出交易的经济风险。在中国，副承销商由主承销商代表发行人委聘，并承诺如果投资者未全额认购，将购买债券发行的任何部分。

- **投资者：**尽管国际市场中的债券在某些情形下也向个人散户发行和出售，国际市场中的多数债券投资者仍为专业投资者，例如，投资基金、养老基金和保险公司，中国银行间市场的主要投资者为银行、保险公司、证券公司和资产管理公司。

- **律师：**国际债券市场中，每笔交易至少需要两家律所参与——一家代理主承销商和其他银行，另一家则代理发行人。这些律所一般要拥有英国或纽约法律的执业资格，符合国际分销债券和相关合约最普遍的适用法律。主承销商律师准备法律文件，起草各种合同，就债券及其他事务的有效性提供法律意见。发行人的披露文件通常由发行人的律师制备，但主承销商律师也会编纂特定章节，并紧密参与起草。根据发行人成立地的不同，可能会委任其他律师就当地法律的相关事项提供法律服务。

在中国，通常仅由发行人聘用一名外部律所作为交易律师，代表发行人和主承销商管理交易的相关的法律事务。只有得到许可的中国律所才能在中国的银行间市场执业。

- **审计师：**国际市场中，发行人审计师的主要职责是向承销商出具“告慰函”。告慰函确认发行人财务报表的准确性（附加重大除外事项）并确认自发行人最后一次经审计账目起，发行人的财务状况没有重大不利变化。

在中国，审计师仅负责准备与债券发行相关的审计报告，不向主承销商提供告慰函。

- **清算系统：**投资者通过这些大型机构持有债券权益，通过电子化而非实物化证券进行交易。

通常，Euroclear 和 Clearstream 是国际市场中的清算系统；上海清算所在中国承担此责。

国际债券发行中还设有受托人或财政代理人角色。而在中国，受托人或财政和支付代理人的职责角色部分由主承销商或相关清算所承担。

- **受托人：**在国际债券市场中，受托人是在发行期内代表债券持有人利益的专业公司。受托人有权代表投资者，允许他们就强制执行行动作出决策，或对文件进行简单的技术更改，使其不会对投资者产生重大影响。但是，并非所有国际债券发行都拥有信托结构。如果债券发行没有受托人，投资者将与发行人直接建立合约关系，并可能寻求直接强制执行权利，而非通过受托人。

- **财政代理人 / 支付代理人：**代表发行人向投资者作出债券支付的银行；在财政代理人情形下，则为执行行政事项（在信托结构中归受托人的事项）的银行。

债券发行程序

以下债券发行程序概览总结了国际和中国银行间市场普遍的主要交易特点。

每一债券发行交易均从发行人向主承销商授权委托安排交易开始。委托的一般条款由发行人和主承销商在早期约定。程序中早先约定的事项包括定向的主商业条款，例如货币、规模、期限、价格范围、信贷结构（例如是否存在担保），以及计划对投资者作出的分销。

债券文件的准备及商议

在准备进入市场的过程中，主承销商与发行人和交易委任的外部法律顾问紧密合作，为交易谈判和敲定合约文件：

1. **募集说明书 / 发行通函 / 发行备忘录：**发行人和其律师就对投资者的分配准备主要披露文件。这即是发行人对投资者投资决策的主要贡献。它包含发行人相关信息以及债券的条款和条件。募集说明书经过适当调查，是一种重要工具，用于避免投资者主张未被提供所有债券重大信息或主张他们被误导。

2. **认购协议：**银团（**“承销商”**）同意认购并支付发行人发行的债券、且发行人同意发行此等债券的协议。该协议包含发行人（以及担保人，视情形而定）就交易有效性、募集说明书准确性和发行人和担保人的一般条件对承销商作出的声明和保证。该协议列出了承销商支付债券义务的几个先决条件，例如提供审计师函件、外部法律意见以及发行人要求的任何文件。它将包含赔偿条款，对承销商就发行所发生的任何费用或开支予以赔偿，它也将载明出售限制，寻求确保承销商发行的方式不要求任何公开登记或其他报备。

3. **信托契据（当使用受托人结构时）** – 信托契据将构成债券，并对发行人和受托人的关系以及而后受托人和债券持有人的关系进行监管。

4. **代理协议** – 一份标准格式文件，委任银行处理针对其债券或息票的出示和交还所应向投资者作出的支付，在财政代理人情形下，则仅对信托结构中归于受托人的行政事项作出规定。

5. **全球债券** – 列出了投资的详细条款和条件。

在对特定交易进行营销之前，主承销商、发行人、外部律师和其他相关代理人将就关键法律文件的格式作出约定。一旦完成定价，这些文件将根据最后详情予以更新，传阅批准，并之后由所有方签署。

尽职调查

尽职调查本质上是承销商在多个专业机构（例如行业专家、律师、审计师）的协助下对发行人业务和财务状况的调查过程，以确保发行人披露文件没有重大的错误陈述或者遗漏，以便于投资者根据发行文件就是否投资该证券作出明确决定。在国际市场中，主承销商开展适当水平的尽职调查，以保护他们自身，防止违规销售的潜在责任（一般包含接收审计师对发行人和任何担保人的恰当的告慰函）。在中国，交易各方（如律师和审计师）会根据自律规则开展尽职调查。

在国际市场中，就某项发行进行的尽职调查程度差别很大，取决于多项因素，包括但不限于发行人在证券市场的历史业绩和信用记录、目标投资者基础以及市场惯例和实践。在中国市场中，关于各类发行人和交易安排，对尽职调查进行规范的规则更为明确和一致。

公告和路演

在国际市场中，交易公告通常在完成初始尽职调查和起草所有重大文件后发布。当投资者和发行人需要举行个人或集体会议或电话会议，此时，初次发行的发行人和不频发发行人会进行路演。值得注意的是，尽管有关发行人业务和潜在交易的信息会在会议中作出陈述，却不会向投资者提供任何陈述的硬拷贝，以突出其为正式发行文件（即，募集说明书），而投资者需依赖正式文件决定是否投资债券。

发起和披露条款

在国际市场上，对主承销商的通行做法是通过彭博或类似的信息平台向市场发布拟进行发行的纲要详情。发行人之后可直接或通过其主承销商，邀请其他金融机构作为副承销商参与发行。承销商之间的关系受他们之间签署的标准格式协议约束。

簿记建档和定价

国际市场中，活跃账簿管理人对“簿记建档”过程进行管理——产生、抓住并记录债券的投资者需求（尽管其他承销商也可提交投资者订单）。账簿管理人在与发行人协商后，将确定向投资者发行和分配债券的最终定价条款。在国际背景下，建档过程并非明确地由许多规则和法规管辖，而银团中的银行更多地依赖于专业判断和经验，以及随着市场发展被市场普遍接受的惯例，以平衡发行人、投资者和承销商之间的权益。中国的簿记建档过程是一种受到更严密管控的拍卖型程序，受 NAFMII 规则管辖，旨在确保对投资者的透明度和公平性。

交割 – 债券发行

在为交割做准备时，主承销商将与交易各方沟通，从而最终敲定债券分销和资金流动的安排。一旦主承销商满意，所有发行先决条件得到满足，他们将指示就已签署和验证的全球债券的交付进行普通存托，从而将净认购款转至发行人指定账户，并要求清算系统将债券贷记至被分配账户。

值得注意的是，在国际市场，银团可能委任稳定价格操作商（从主承销商中），寻求新发债券在可自由交易后的价格保持相对稳定。目前中国银行间市场通常无这类安排。

IV. 国际离岸和中国在岸一级市场实践比较

A. 综述

报告的本部分中的比较和分析包含国际和中国市场均普遍的一级市场三个重要方面：尽职调查、披露和簿记建档。尽管两个市场中最重要原则和程序类似，仍然值得简要指出若干最重要的区别。

尽职调查

- 国际市场中，尽职调查属于承销商在多个专业机构（例如行业专家、律师、审计师）的协助下开展的基本程序，旨在确保发行人披露文件没有重大的错误陈述或者遗漏，以便于投资者基于发行文件就是否投资该证券作出明确决定。根据司法管辖地的法律框架，尽职调查可以作为主承销商被起诉时免于承担责任的辩护（依据），如果投资者依赖的发行文件存在重大错误陈述或者遗漏的情形下。而中国体系则基于对投资者保护原则和消除信息不对称。但是，中国市场的尽职调查目的和侧重点近期变得与国际市场更为相似。
- 国际市场的尽职调查已在市场实践基础上发展了数十年；中国的尽职调查则受到更细致、更全面的监管指导。
- 在中国，会要求跟踪尽职调查，而在国际市场，尽职调查的要求则在交割时结束。

信息披露

- 发行人的不同承销商会对募集说明书的准确性和完整性做出不同声明和保证，并承担不同水平的潜在责任。
- 中国发行要求对筹集款项的用途做更详细的披露。
- 国际发行通常要求对债券的条款和条件以及投资者权利做更详细的披露。
- 由于国家政策原则的广泛性，国际和中国市场在披露的其他特定方面有所不同，例如有关控制实体、相关各方、工作安全性和国家秘密的披露。

簿记建档

- 在中国市场上，发行人并不参与核心的建档程序，而在国际市场，发行人可能更多地参与到账簿管理人对分配和定价的讨论中。
- 中国市场中，建档过程相对透明，通过价格排序分配债券，类似于拍卖过程，而在国际市场上，分配和定价更多取决于市场的微妙条件和主承销商的的专业经验和判断。

B. 尽职调查

什么是尽职调查?

尽职调查是对发行人信息进行必要的发现、处理和验证过程，以使投资者能够做出合理的投资决策。

在中国和国际债券市场中，尽职调查是发行程序的基本部分。尽职调查，在实践中，是对发行人进行彻底调查，确保对投资者披露信息的准确性和完整性。尽职调查涵盖了所有与进行（是否）投资发行人（所发）债券的决策有关的方面，包括发行人的法律和财务状况、业务经营、管理和战略。

有效的尽职调查是准备债券发行文件及在发行阶段做出准确信息披露的基础。实际情况中，发行人被要求披露所有必要信息，以使投资者能够评估和判断与债券有关的各类风险。

在市场实践方面，国际资本市场和中国银行间债券市场的尽职调查范围没有重大区别。

但是，基于市场发展阶段、法律环境和金融监管，尽职调查的实际操作中存在些许不同。

适用的法律和指导

国际市场中，没有成文法（英国、欧盟、美国或其他）对应采取的尽职调查的范围或方法做出规定。在美国，对此存在大量的判例法及美国证券交易委员会指引。尽职调查部分基于过失性虚假陈述相关责任的规定。

因此，国际资本市场的尽职调查原则上属于实践中的惯例，根据发行类型、性质和发行人地理位置以及投资者范围和类型不同而存在巨大差异。每位承销商均就尽职调查拥有自身的内部惯例和要求。

在此方面，ICMA 一级市场手册对尽职调查列出了建议“R3.3”和“3.4”项：

“R3.3 应当对每次发行项下将开展的尽职调查程度予以仔细考量。

3.4 不太可能对每一次发行情形下是否应进行尽职调查或应开展何种尽职调查进行规定，并且该程序根据发行（情形）的不同存在巨大差异（例如，取决于所发行证券类型、证券附带权利及发行人及其业务的性质）。”

中国市场对尽职调查具有更扎实和全面的具体标准。2008 年，NAFMII 制定了《银行间债券市场非金融企业债务融资工具尽职调查指引》（尽职调查指引）及《银行间债券市场非金融企业债务融资工具中介服务规则》。尽职调查指引对境内银行间市场的参与者是有约束力的。NAFMII 基于中国人民银行颁布的《银行间债券市场非金融企业债务融资工具管理办法》发布了这些指引。

NAFMII 尽职调查指引对银行间债券市场的主承销商尽职调查作出规定。其包含尽职调查的定义、工作要求、尽职调查方法、尽职调查报告、跟踪尽职调查且交易相关的尽职调查、最终尽职调查及其他方面。

但是，基于市场发展阶段、法律环境和金融监管，尽职调查的实际操作中存在些许不同。

为何进行尽职调查？国际和中国市场透视

尽职调查主要旨在确保：(1) 募集说明书中所有重大事项信息是真实、准确的；(2) 募集说明书中并未遗漏任何必要的重要事实，使潜在投资者能够对发行人资信作出合理决策。

国际和中国市场中尽职调查的主要作用基本相同。但是，在着重点和优先性方面还存在细微不同。在国际资

本市场中进行尽职调查基本上旨在保护投资者免于接收和依赖于虚假的或有歧义的信息，并避免发行人和主承销商的潜在声誉受损和因此对投资者（造成）损失所应承担的民事责任。在国际背景中，承销商不但希望确认募集说明书中的所有重大事项信息准确（该程序通常称为“审阅”），也希望确认募集说明书没遗漏任何重要事实，即确保所有重要信息的正确披露。

中国的银行间债券市场则强调尽职调查在减少信息不对称、加强对投资者的风险披露方面的职责。中国市场操作还突出尽职调查通过传递真实、可靠的信息以推进债务融资工具得到更准确市场定价方面的作用。同时，主承销商进行的尽职调查将指导其他中介的尽调方向，为对发行人的总体调查提供全局参考。

国际和中国市场方式是硬币的两面。在国际背景下，责任标准（的设定）要求向投资者提供完整的重要信息；另一方面，在中国市场中，未能提供充足、准确的信息可能导致负责进行尽职调查的一方承担相应责任。

尽职调查中各方的角色

在尽职调查的内容方面，国际市场和中国市场在关于被调查的发行人信息方面并无重大区别。但是，在尽职调查的实体和具体职责方面，有些许区别。

在国际市场中，承销商及其律师将主导整个尽职调查程序，但重点会放在对业务的尽调（以及在较小范围内的财务尽职调查）。实际程序会因不同发行人而有所不同，但基本所有的公开债券发行都包括发行人审计师出具的安慰函（作为财务尽调一部分），以及法律顾问出具的一份或多份法律意见（作为法律尽调一部分的）。

在中国，主承销商开展的尽职调查构成对发行人尽职调查的基础。律师和审计师也是尽调工作的主要参与者。主承销商通常将组织汇总律师和审计师对尽调的独立专业意见，并以对尽调的范围和有效性给出综合建议。

中国：主承销商开展尽职调查

主承销商尽职调查构成债务融资工具工具的尽职调查的基础。与其他中介开展的尽职调查相比，主承销商尽职调查所涵盖的范围最广。

其旨在对债务融资工具发行文件的真实性、准确性和完整性做出审慎核查，确保债务融资工具发行的信息披露质量，并为主承销商就发行人发行债务融资工具出具推荐意见提供基础。

主承销商尽职调查的核心意义在于减少债务融资工具的信息不对称，促进市场效率的提高。

具体而言，作用包括减少投资者和发行人之间的不对称信息，促进债务融资工具市场合理定价，降低市场运行成本；减轻交易商协会和发行人之间的不对称信息，以提高自律管理效率、降低自律管理成本；发掘发行人投资亮点，促进发行人提高信息披露和规范运作能力，协助发行人降低融资成本；减小主承销商面临的监管风险、承销风险和声誉风险；为其他中介机构的尽职调查提供总体方向性指引和全局性参考。

审计师尽职调查

国际资本市场中，发行人（的）审计师将对发行人的财务报告和发行人在募集说明书中披露的所有财务信息进行详细审阅和验证，并出具安慰函。安慰函将记录审计师的程序和结论。尽管程序各有不同，但通常会包括在前一财务年度财务报告后对账目进行审阅，并讨论已发生但财务报告中未包含的相关负面结论和负面变动。

中国市场中，审计师则不向承销商出具安慰函。但是，在其他方面，审计师的职责与国际市场审计师类似。审计师将完成对财务信息披露的验证，发行人将提供经审计的财务报告。审计师也可对重大或存疑的财务处理问题（如有）出具专项意见，而这些意见将在募集说明书中被引用。

律师尽职调查

在中国的银行间债券市场，主承销商帮助发行人准备债务融资工具的募集说明书，而发行人律师的职责主要是对债务融资工具的发行出具法律意见书，主要作用确保债务融资工具的发行人和投资者之间建立合法的债权债务关系。因此，发行人律师的尽职调查重点主要放在法律意见书所涉及的事项。

国际市场中，发行人必须展示其发行证券的资质（例如，其登记文件并不禁止证券发行）。承销商和律师也应确保债券发行文件得到发行人的正式授权，并且是合法、有效、具约束力和可强制执行的。发行人的信息来自于发行人填写完成的尽职调查问卷。问卷要求发行人提供相关文件的副本或在尽职调查讨论时做出回应。与发行人管理层的访谈是法律（及业务）尽职调查的重要部分。

国际市场中，债券发行人的律师将对债券的合法性提供法律意见。除任何发行人律师意见以外，主承销商律师也可提供法律意见。发行人和承销商的律师也将协助发行人准备或审阅债券发行文件，尤其是募集说明书。发行人律师和主承销商律师通常协商确定法律尽调的范围。募集说明书主要由律师起草，但承销商最终主导尽职调查程序。

在中国市场中，主承销商帮助发行人准备债券的募集说明书，而发行人律师的职责主要在于对债券发行出具法律意见书。发行人律师的尽职调查重点主要是应被包含在法律意见书中的相关事项。

其他程序包括，律师对发行人的主要业务合同和其他重要的公司文件进行审阅，对发行人在办公地点的主要设施进行调查，以及参加（公司）与重要第三方的会议，例如监管部门、供应商、客户或银行。

尽职调查程序

尽职调查的程序和限度取决于发行人的业务性质、拟发行债券类型、债券投资者类型和发行地。经常发行债券的高水平发行人可能受到非常有限的尽职调查，而在新兴市场进行首次发行的发行人则很可能受到较高程度的尽职调查。

作为国际资本市场的通行惯例，尽职调查的程序和限度取决于发行人的业务性质、发行债券的类型、债券投资者类型以及发行地。牵头承销商根据每次发行的具体情况考虑所需尽职调查的限度。经常发行债券的成熟发行人可能受到非常有限的尽职调查，而在新兴市场进行首次发行的发行人则很可能受到较高程度的尽职调查。

在当前的 NAFMII 规则下，在中国，尽职调查的限度和程序对经常发债的高水平发行人和初始债券发行人而言是相同的。中国要求的尽职调查直接与募集说明书中要求的信息披露直接相关，一般包括：

- 业务独立性
- 内部管理和运营合规
- 主要经营
- 财务状况
- 行业和行业前景
- 其他重要事项
- 已募集资金的用途；及
- 信用状况

在中国，尽职调查是中介机构的共同职责。参与债券发行的中介机构都应当遵守相关专业责任标准和道德规范。这包括独立原则、客观原则、审慎性原则和保密性原则。

在中国市场中，债务融资工具的尽职调查方法包括查阅、访谈、列席会议、实地调查、信息分析、印证和讨论。尤其需要注意的是，并非所有方法都适用于所有的债务融资工具发行人，主承销商需要根据发行人的行业特征、组织特性和业务特点选择恰当的方法开展尽职调查。

- 查阅：查阅发行人制度与业务流程相关文件，全面了解企业日常运行所依赖的主要制度、业务流程和相关内控措施，具体包括组织人事、财务会计、资产管理、公司治理等；
- 访谈：通过与发行人的高级管理人员，以及财务、销售、内部控制等部门的负责人员进行谈话，从而掌握发行人的最新情况，并核实已有的资料；
- 列席会议：列席发行人有关债务融资工具事宜的会议，如股东会、董事会、高级管理层办公会、部门协调会等；
- 实地调查：到发行人的主要生产场地或建设工地等业务基地进行实地调查；
- 信息分析：通过各种方法对采集的信息、资料进行分析，从而得出结论性意见；
- 印证：通过与有关机构进行沟通和验证，从而确认查阅和实地调查结论的真实性。

在中国，承销商为债务融资工具开展的尽职调查通常分为三个阶段：(1) 初步尽职调查，(2) 全面尽职调查，和 (3) 跟踪尽职调查。

初步尽职调查是指主承销商在承揽业务过程中为判断拟发行人是否可以发行债务融资工具而进行的基本调查；

全面尽职调查是指主承销商对发行人进行全面了解，充分熟悉其经营情况及其面临的风险和问题，并有充分理由确信其可以发行债务融资工具，以及确信其注册文件和发行募集文件真实、准确、完整的过程。

跟踪尽职调查是指在债务融资工具存续期内，主承销商需要持续关注企业的盈利情况、行业趋势，以及尽职调查中提出问题的整改情况，视整改情况调整方案。

按照 NAFMII 的指引和市场惯例，尽职调查包含以下步骤：

1. 组建工作团队：调查团队主要由主承销商总部人员构成，分支机构人员可参与和协助；
2. 工作计划制定及项目启动会议：工作计划主要包括工作目标、工作范围、工作方式、工作分工、工作时间、工作流程、参与人员等；
3. 尽职调查清单提交：提交尽职调查清单是尽职调查工作开展的重要步骤，需要发行人按照尽职调查清单准备相关材料，并在约定的时间内将材料提交给尽职调查工作团队；
4. 访谈：在对取得的尽职调查资料进行初步分析的基础上就资料中的疑问以及部分通过访谈互动有助于深入了解企业信息的问题可汇总成访谈提纲，提前提交企业；
5. 形成尽职调查结论：主承销商应根据取得的尽职调查资料和现场访谈的记录，整理工作底稿；
6. 跟踪尽职调查：分为定期跟踪尽职调查和不定期跟踪尽职调查。

在国际背景下，主承销商的尽职调查程序类似，主要区别在于债券发行交割后就不再需要尽职调查（相比较，中国可能要求在债券发行期内进行跟踪尽职调查）。

- 当发行人使用一项新的募集说明书进行初次发行时，承销商可能会集中尽职调查问卷，并参与和发行人高级执行官举行的一系列访谈。问卷旨在取得关于发行人的所有业务方面尽可能详细的信息。但是，如果发行人经常发行债券且经验丰富，承销商通常仅需要对先前募集说明书作出更新（只要其无需体现任何重大近期进展）。
- 发行前，承销商和发行人的高级执行官可举行电话会议及其他尽职调查会议。
- 作为审阅和验证程序的一部分，承销商将更新募集说明书的相关内容，并与发行人相应级别的管理层（人员）讨论该等内容。承销商也将审阅发行人按照承销商律师的要求所提供的文件。
- 承销商也可指派其内部信贷分析师对发行人开展信贷分析，作为尽职调查程序的一部分，而不同于信用评级机构的单独分析。
- 作为承销协议的一部分，承销商将需作出适当的陈述与保证。

尽职调查内容

在国际和中国市场，尽职调查可分为财务、业务和法律尽职调查三大部分。

财务尽职调查

财务尽职调查主要旨在确保招股书中包含的所有财务信息准确而完整。发行人（所聘）审计师将详细审阅和验证发行人的财务报告以及发行人在募集说明书中披露的所有财务信息，并发送安慰函。

国际市场不同于中国市场，安慰函记录了审阅程序和审计师的审计意见。在两个市场中，会计师均对财务报告进行审阅，并与管理层就前一次更新或提交募集说明书（之日）起已发生但财务报告中未涵盖的相关负面结论和负面变动进行讨论。

业务尽职调查

业务尽职调查包括承销商对发行人运营和前景的评估。分析要同时兼顾回顾性和前瞻性。通过前瞻性调查，承销商必须决定发行人有适当的声誉。通常，承销商将对发行人的业务计划、预测和预算进行调查，确保他们具有充足且适当的假设。承销商将与发行人管理层举行合适的讨论。如果发行人获得非常高的评级，承销商通常不会开展此类尽职调查，除非承销商有确信原由怀疑发行人评级的准确性。如果发行人评级较低，承销商通常将根据其内部程序对发行人进行信用分析。

法律尽职调查

法律尽职调查通常限于，检查发行人是否合法有效设立，不存在任何未决的破产（或清算）程序，已有效授权（本次）债券发行，并且债券将成为对发行人合法、有效和具有约束力的义务。

C. 信息披露

国际和境内中国债券市场均在“披露为基础”的原则下运营，侧重充分信息披露，以便投资者作出投资决策。

与开展尽职调查同步，募集说明书中的披露将包含发行人业务的相关信息、发行人财务状况、发行人组织、运营和特殊债券发行的法律和监管方面。募集说明书披露通常也包含单独的风险因素章节（涵盖所有相关领域）以及有关债券特定条款和条件的详情。

国际债券发行披露的一般原则是，发行人必须披露投资者需要做出知情投资决策所需的所有信息。这反映在欧洲募集说明书立法（《欧盟募集说明书指令》机制）中，也包含对不同类型发行人和不同类型担保的特殊信息要求。中国银行间市场的披露规则，详细列载于 NAFMII 的《非金融企业债务融资工具信息披露规则》中。

国际市场的披露水平将取决于对投资者的计划分配。针对计划公开出售或非公开出售的债务，或者向散户出售或仅向机构投资者出售，披露要求可能不同。按照《欧盟募集说明书指令》，计划向散户出售的证券披露机制更为繁重，并包含在募集说明书中加入发行综述的要求。

按照《欧盟募集说明书指令》，发行人接受募集说明书责任，并确认，就其所知，募集说明书符合事实情况，并且募集说明书未有任何可能影响其含义的遗漏。

如果适用《欧盟募集说明书指令》，募集说明书必须按欧盟规则由欧洲的国家监管机构审查并批准。

在中国银行间债券市场，所有新发行的公司债券必须向 NAFMII 登记。与在《欧盟募集说明书指令》下由国家监管机构的审查和批准类似，NAFMII 仅对募集说明书的大体内容进行审查，并不对投资的价值或风险做任何判断或评论。国际和中国市场中，投资者都必须在购买债券前，仔细阅读募集说明书并独立分析披露、评估投资风险。

然而，在中国，发行人将在募集说明书中有效地申请募集说明书披露的准确性。（同样地，在国际市场中，发行人也需声明对主承销商所做披露的准确性。）董事会（或同等实体）批准募集说明书，且所有董事（或同等主体）保证募集说明书不包含虚假信息、误导性陈述或者重大遗漏。他们对募集说明书的真实性、准确性、完整性和及时性承担严格的个别和连带法律责任。此外，企业的领导人和会计部门负责人需保证包含在募集说明书中的财务信息的真实性、准确性、完整性和及时性。在中国登记文件中，发行人明确承诺按照法律、法规和募集说明书履行其义务。此声明在欧洲并无要求。

债券（和发行）的条款和条件

《欧洲募集说明书指令》要求对证券的特定信息作出披露，还包含有关发行人资本结构中债务优先性的条款。

欧盟规章中列出了必须予以披露的特定相关条款，但市场实践是充分地逐字列出债券的条款和条件。

在中国，注册文件必须包含发行的以下基本条款：

- 债务融资工具的全名
- 发行人全名
- 发行人的未偿债务
- 注册通知书文号
- 期限、面值以及发行价或利息定价方法
- 目标投资者
- 承销和发行
- 发行日期和起息日

- 赎回价格、方法和日期
- 信用评级机构、信用评级结果
- 赎回或回售
- 信用增进

欧盟的要求与中国的要求类似，但不要求对发行人的未偿债务或“注册通知书文号”进行披露。但《欧盟说明书说明书指令》要求以下额外披露（除其要求之外）：

- 发行形式（不记名或记名）
- 货币
- 证券排名
- 赎回和偿付条款（包括提前赎回或分期偿还条款）
- ISIN
- 管辖法律
- 有关应付利息的条款
- 收益
- 债务证券持有人声明
- 有关证券的决议、授权和批准
- 对自由可转让性的任何限制
- 上市安排（即许可交易）
- 任何信用评级
- 在特定情形下
  - 预提税信息
  - 发行条款与条件
  - 定价
  - 参与募集和承销的实体的名称和地址

募集款项用途

如果证券面额低于 100,000 欧元，《欧盟募集说明书指令》要求发行人披露筹得款项用途，以及如果债务发行无法满足发行人融资需求则所需的其他资金金额和来源。实际操作中，所得款项用途可以披露为一般公司用途。如果不是为了产生利润和 / 或风险对冲，《欧盟募集说明书指令》也要求在特定情形下披露发行原因。

中国对筹集款项用途的披露要求通常比国际法规更严格。中国发行人必须披露使用所筹款项的实体名称、任何资金缺口的总额及计算。如果筹集款项用于某项目，则需要披露项目的投资金额，自有资本的可用性，以及有关土地和环境保护的资金、施工计划、批准文件状态。

与欧洲规则不同的是，中国披露规则也要求发行人保证，发行人将资金用于生产和经营活动，将遵守国家法律法规和政策，且发行人将在债券期限内变更筹得资金用途前，及时披露相关信息。

风险披露

《欧盟募集说明书指令》要求对影响发行人偿付能力的风险以及与证券相关的市场风险进行讨论。

在中国，建议对以下风险及有关现行债券发行的其他特殊风险做出明确披露：

- 投资风险。利率风险、流动性风险和资不抵债风险。
- 财务风险。财务因素导致的风险，例如发行人的资产和负债结构；资产流动性；债务状况；资本支出；投资回报；限制资产；非经常利润和损失；衍生品公允价值的潜在变化；或有负债；以及重大会计处理的重要变更。
- 运营风险。发行人的产品或服务相关的市场或经营环境变化导致的风险；产品供需波动；原材料价格变化；行业竞争；商业周期或产品生命周期的影响；市场饱和或市场分割；对单一市场的依赖；市场份额；以及汇率和贸易环境的变化，均视与发行人的相关性而定。
- 管理风险。由于组织结构、与控股股东及其他关联方的竞争和重大相关交易、管理层薪酬、子公司结构、复杂的内部股权关系、发行后可能的资产重组或重要股东变更，造成发行人的管理层、管理制度和管理政策不稳定，因而导致的风险，以及和工作场所安全性有关的风险。
- 政策风险。发行人因国家法律、法规和政策可能发生的变动而发生的具体政策相关风险。发行人必须披露财政政策、金融政策、土地使用政策、产业政策、行业监管政策、环境保护政策、税收政策、业务许可制度、外汇系统、国际反倾销政策、反补贴或特殊保障措施变动可能产生的影响，以及国与国之间政策差异可能产生的影响。

历史演变

中国披露规则通常要求发行人披露有关公司演变的更多历史信息。

《欧盟募集说明书指令》通常要求发行人披露有关发行人历史的有限信息以及有关发行人和任何近期重大事件的当前信息。

中国发行人对企业历史发展的披露将包括主要实体的演替，企业的建立、历史发展和重组，以及股权结构的历史改变；企业在不同历史期间中前进的重要事件，包括股份制改革、重大增资或减资、合并、分离、破产重组和名称变更。

企业概览

在中国，发行人必须披露其治理和组织结构。中国发行人必须披露有关其董事、监事和高级管理层的基本信息，并确认遵守中国公司法和其他相关法律法规及章程。在欧盟，披露要求与中国类似，但无需确认遵守“公司法”。

中国要求对具体的业务部门进行披露，包括历史营业收入、营业成本、利润和利润率。对于任何贡献了超过10% 收入或利润的业务部门，发行人必须披露过去三年部门的盈利模式、产业链、生产和销售区域、关键技术过程和竞争地位。披露还必须包括公司在业内的地位和经营优势。

中国发行人还必须披露详细的在建工程，包括相关成本、计划、资金和资本的可用性，以及对适用法律的合规。欧盟对正在进行或计划的建设没有明确的同等要求。欧盟只要求对发行人的主要业务、产品和服务，以及募集说明书中有关发行人竞争地位陈述的根据做一般披露。

战略和利润预测

中国的规则要求披露发行人未来三到五年的发展战略和计划。在《欧盟募集说明书指令》下，没有明确规定要求发行人披露战略。

广义而言，《欧盟募集说明书指令》规定，对利润预测的任何披露 (1) 包含发行人预测的相关假设，分为公司管理层可控或不可控因素；(2) 符合发行人适用的会计标准；及 (3) 是在相比募集说明书所含前些年财务信息的基础上制备。

控制股东和实际控制权益

《欧盟募集说明书指令》要求披露发行人的控制所有权权益。但是，相比较中国的规则，其只要求披露发行人所知的信息。

这可能是因为中国市场相比欧洲市场，普遍的法律和所有权结构不同。中国发行人通常有部分的国有所有权，而跨国公司可能拥有多种组织形式，跨越不同结构的国际实体。

中国发行人必须披露与控制股东在资产、人员、组织、财务和业务运营方面的企业和业务关系。中国要求披露控制股东和实际控制实体或主体，包括相关的持股比例。《欧盟募集说明书指令》下，发行人通常需要披露（在发行人知晓的范围内），发行人是否被直接或间接拥有或控制，并描述该控制的性质，并对已经实施哪些措施确保不滥用该控制加以描述。

在中国，如果控制股东为自然人，则必须披露相关信息，包括该自然人的姓名、大致背景、在发行人中的股份质押，以及该自然人在其他企业中的主要投资，和该人与其他主要股东的关系。如果控制股东为法律实体而非自然人，则必须对实体名称、设立日、登记高管、主营业务、资产规模、收入和利润，以及该法人所持发行人股份的变动和质押。

就主要股本投资而言，中国发行人必须披露在合并子公司中的持股比例。他们也必须披露合并子公司（持有低于 50% 的股份）的理由，或不合并子公司（持有超过 50% 股份）的理由。另外还需披露对企业有重大影响的子公司情况，包括主营业务和过去一年的主要财务数据（包括资产、负债、所有者权益、收入和净利润）。

《欧盟募集说明书指令》不要求发行人充分披露与所有子公司相关的经营信息。中国规则要求发行人披露其子公司过去三年的财务信息，而《欧盟募集说明书指令》则要求发行人至少披露过去两年的合并财务信息，某些情形例外。

重大合约和关联交易

广泛而言，《欧盟募集说明书指令》要求发行人概要地总结披露所有并非在发行人正常业务过程中订立的重大合约，这些重大合约可能导致任何集团成员的重大义务或权利，可能影响发行人满足其为证券持有人提供担保的能力。

中国要求就关联交易作出以下披露：

- 关联交易政策的内容，包括但不限于，定价原则、决策程序和决策机制。
- 应付账款、应收账款、其他应付款、其他应收款、现金流以及其他有关经营活动的标的的内容和变动。
- 关联交易的概览、原由、定价基础、结算方式、影响以及过去一年的资金占用。

具有国家重要性的事项

中国的规定要求就安全生产相关信息作出披露。

欧盟对在募集说明书中披露工作安全问题没有明确要求，但国家主管部门可以要求从事采矿及其他特殊列举行业的发行人提供适用性信息。

中国要求发行人就安全生产作出以下披露：

- 之前重大安全事故情况，包括事故的基本信息、国家有关部门对事故原因和性质的认定、对发行人的相关补救要求以及随后的验收。
- 有关工作安全的内部控制系统和相关的应急响应计划。
- 有关工作安全管理的具体措施和实施状态。
- 过去三年的工作安全检查记录。

中国募集说明书还要求具有有关国家机密的规定。发行人声明“本公司保证，本公司为债务融资工具的发行所披露的所有信息不涉及国家机密，本公司将排他性承担公共信息披露产生的任何后果。”此规定为中国特殊规定，在欧盟无此要求。

财务

中国要求对过去三年的经审计财务报告进行披露，并对会计政策中的任何重大变动作出披露。尽管存在部分例外情形，《欧盟募集说明书指令》要求对过去两年的经审计财务报表进行披露。按照《欧盟募集说明书指令》，如果发行人来自欧洲共同体（EEA）成员国，发行人应按照欧盟的国际财务报告准则（或在特定情形中，其母国的会计标准）披露财务报表。

来自于另一国家的发行人必须按照国际会计标准或同等国家会计标准披露财务信息。如果发行人发行的证券面值至少 100,000 欧元，其有权按照其他标准披露财务信息，但也必须披露 (1) 财务数据未按国际会计标准披露，可能与同行标准相异；及 (2) 对与国际会计标准之间的差异进行描述。

按照中国规则，发行人必须披露过去三年及最近期间的资产负债表、损益表和现金流量表，并说明数据来源。如果公司准备合并财务报表，公司必须同时披露合并财务报表和母公司的财务报表。

广义而言，按照《欧盟募集说明书指令》，发行人应披露：

- 发行人是否同时准备了其自身的和合并的财务报表，至少合并财务报表。过去一年经审计财务信息不得早于登记文件日起 18 个月。
- 历史财务信息已经审计的声明。如果对财务信息的审计报告被审计公司拒绝，或如果审计报告包含限定条件或免责声明，则上述拒绝或限定条件或免责声明必须完整复制，并给出原由。
- 说明注册文件中其他经审计师审计的信息。
- 如果注册文件中的财务数据并非摘自发行人经审计的财务报表，则披露数据来源以及数据未经审计的声明。

资产 – 负债结构

中国市场的发行人应在符合标准的会计程序前提下，就超过总资产 10% 的资产，或超过总负债 10% 的负债，或在过去一年和最近期间受到变化影响超过 30% 的重大会计项目，分析此等变化和变化的原因。

资产重组

中国规定就资产重组作出以下披露：

- 重大资产重组产生的潜在风险。
- 任何资产重组计划、当前阶段、已完成的法律程序、重组程序的合规以及作为债务融资工具发行人的资质及其决议有效性。
- 过去三年及最近期间的可比财务数据。
- 对其生产、经营和偿付能力的重组影响的分析。

财务指标：在中国，发行人必须披露偿付能力、利润率、经营效率及其他相关财务指标的数据，以及其在三年历史期间中改变的原因。按照《欧盟募集说明书指令》，通常会要求发行人在披露中对集团自上一财务期间（已就该期间发布经审计财务信息或临时财务信息）结束起发生的财务或贸易地位的任何重大改变进行描述，或恰当的否定声明。

附息负债。中国的规则规定，发行人必须披露附息负债的金额、还款和其他关键条款以及信贷支持结构。

或有负债。中国的规则要求对外部担保人、未决诉讼和仲裁、重大承付款及最近期间的其他或有负债作出披露。按照《欧盟募集说明书指令》，要求发行人披露在至少最近 12 个月期间内，任何政府、法律或仲裁程序的相关信息（包括发行人知晓的未决或濒临的程序），未来可能或最近曾对发行人和 / 或集团财务状况或利润率有重大影响，或提供恰当的否定声明。

受限资产。中国发行人必须披露最近期间的抵押、质押、留置和其他目的资产限制，以及可以挑战第三人的其他优先级债务偿还。披露的内容包括但不限于资产名称、抵押权人 / 质权人、资产的账面价值和条款。

衍生品。中国发行人必须披露最近期间所持衍生品的名称、交易目的、交易结构、名义本金和利润 / 损失。

税收：中国市场的发行人必须披露债务融资工具投资的应纳税额和有关发行的税收政策和发行人的财务数据。中国的披露要求还规定作出税务披露不构成对投资者的税收建议的声明。根据《欧盟募集说明书指令》，如果证券面值低于 100,000 欧元，发行人必须就发行人所在国和发行所在国或寻求交易国，披露在源头预提的证券所得税的信息以及发行人是否承担了预提税责任的指示。对面值至少 100,000 欧元的证券进行税务披露也属于市场惯例。

除上述以外，中国的规定还要求对资产负债表的以下方面做出披露：

- 重大投资产品和财富管理产品 – 包括交易目的、结构、名义本金金额以及投资的近期利润 / 亏损
- 海外投资 – 包括金额及相关经营数据
- 直接债务融资计划 – 包括实施计划的金额和进展

就有关发行人的信用状况，中国法规要求作出以下披露：

- 信用评级 – 过去三年中的历史评级，并包含信用评级机构和符号解释
- 信贷工具 – 信贷额度，并披露哪些已使用、哪些未使用
- 违约记录 – 过去三年及最近期间内，金额、时间、原因和债务违约的解决进展
- 历史债务发行和偿还

信用增进

中国要求就信用增进作出以下披露：

- 相关机构的信息。如果信用增进是由一家专业信用增进机构提供，发行人应按照 NAFMII 的《中国银行间市场信用增进业务自律管理规则》披露信息。如果由其他企业提供信用增进，发行人应披露相关企业信息，方式与发行人相同。
- 担保或相关信贷支持协议的内容，包括金额、期限、范围；企业的权利和义务、担保人和债权人。
- 抵押物的名称、抵押品金额（账面价值和评估价值）以及该金额占总面值的比例，已发行债券的本金和利息总额，以及任何相关抵押物评估、登记、保护和法律程序的证据
- 证明担保、抵押或质押的相关文件
- 在担保人信用或抵押物发生重大变化的情形下不断进行披露。

《欧盟募集说明书指令》要求按照发行人披露要求对信用增强提供方的信息予以披露。一般来说，披露还必须包括信用增强有效性的条款和条件，以及信用增强提供方是否对债券持有人的变更享有否决权。

有关发行的机构

在中国和欧盟规则下，发行人都必须披露有关发行的基本法律、合同信息，包括承销商、法律顾问、会计师事务所以及（在适用的情形下）信用评级机构、信用增强机构、登记处、受托人、清算代理人以及其他代理人。

根据中国法规，发行人必须披露发行人和相关机构或此等机构人员之间的重大关系。类似地，在欧盟法规下，发行人也必须披露在近期发行中有权益的任何人士或机构，并详细说明利益冲突。

参考文件

在中国和国际市场中，披露的一个重要方面是在募集说明书中引用合并文档的集合。

在中国，这些文件包括企业注册文件、公开披露文件和募集资金项目的相关批准文件。

在欧盟，通过引用加入的文件通常包括需要披露的财务信息。此外，《欧盟募集说明书指令》要求发行人披露在哪些地方可以检查特定信息，包括募集说明书中包含的或引用的发行人的章程、所有报告、信件、其他文件、历史财务信息、评估信息、第三方提供的信息文件。

D. 簿记建档

“簿记建档”是承销商试图根据市场情况和投资者需求确定在什么价格发行债券的过程。

一般来说，国际市场的债券发行比中国拥有更短的簿记建档流程和对信息交流更少的限制，但受一般内幕信息机制的约束。

承销商角色

国际资本市场在确定最终簿记价格时，会更多依赖于牵头承销商的经验和专业性，并动态地指导价格。牵头承销商在决定何时发布价格、需对全球市场条件的变化以及在簿记建档过程中协调国际投资者和分销商方面拥有一定灵活性。

中国的簿记建档过程中对发行文档和信息交流的规定的主要受 NAFMII 自律规则的指引，以确保发行和分配过程的公平性。在中国，定价也由牵头承销商管理，但是过程相对简单。在中国，整个建档过程以及分销流程都有明确标准，但国际资本市场通常不设定此些标准。

发行人角色

欧盟并未明确限制发行人参与簿记建档过程。而在中国市场，簿记建档过程是由牵头承销商组织的，发行人与投资者相对隔离。

分销设定期间

国际资本市场对发行公告和付款通知并无强制要求，但规定发行人在交割时向市场发布公告。中国的银行间债务融资工具市场则对公告发行的时间和缴款流程有所要求。国际资本市场对发行公告和付款流程并无强制要求，a line break

在海外市场中，如果发行人在簿记建档过程中发现价格优势，它可以通过简单简单步骤进一步优化价格。在中国，如果同样的情况发生，发行人还可以调整建档的价格区间并向市场发布公告。在国际资本市场上，如果发行人遇到建档过程中的有利价格，发行人可以进一步优化价格。

国际建档程序

国际债券发行的簿记建档过程本质上是联席簿记管理人和全球投资者之间的价格洽谈和发现的过程。联席簿记管理人的在簿记建档过程中的目标是，为发行人实现最佳定价和规模目标，符合发行人规模、定价、期限和不断产生的市场准入目标。投资者在簿记建档过程中的目标发现和实现满足投资者的风险和回报目标的定价。

新发行人或较少发债的发行人的债券营销，一般通过与国际投资者的全球路演会方式进行。路演的目的是向投资者介绍公司的亮点、业务策略和最新发展情况，使投资者对拟进行发行的债券关注度加大，并指导投资者按联席簿记管理人的定价范围购买证券。

通常将在开市时向国际投资者发送路演消息，而交易的联席簿记管理人将根据市场条件决定是否继续交易。但这个过程是持续的，路演的结果也不会明确决定交易继续进行直至完成。

投资者会议之后，联席簿记管理人的销售团队将跟进各自的投资者寻求反馈。通过路演收集的反馈是联席账簿管理人在建档程序开始前制定初始定价范围的重要指示。拥有了足够的有建设性的投资者反馈，联席簿记管理人则对“初始价格指导”（或更初步的“初始价格考虑”）作出决定，经发行人许可开始簿记建档程序。

1. 确定初始价格范围。按照市场情况和可比交易决定初始指导。

2. 投资者反馈和讨论。投资者提供反馈，承销银团和销售团队与投资者进行沟通。销售团队将主要向全球主要投资者推广发行人的信贷亮点，并指导投资者对建档人建议的价格范围作出回应。

3. 向市场公布最终价格指导。实现最优价格的策略是采用簿记建档方法，账簿管理人将引导市场实现最佳趋势、达到最优价格。

4. 价格优化。投资者提供进一步反馈，承销银团和销售团队与投资者进行沟通。建档趋势将允许发行人在之后公布的指导区间进一步优化价格。

5. 决定最终利差和规则。

6. 公布投资者配股结果。

7. 决定最终价格。

8. 签署认购协议。

9. 进入初步结算指示。

10. 进行最后的先决条件检查。

11. 根据现场交付的全球债券向发行人发放发行所得款项。

首次 / 少发发行人可能在公告前几周就可能的交易与银行进行初始接洽（允许初步准备），然后在开放订单账簿之前进行两周左右的营销路演。频繁发债的发行人可以联系银行立即公告，同时开放订单。

从开放订单账簿到定价通常仅在一日之内。定价到交割需要五个工作日，合同签署在交割和结算前两个工作日。

中国国内债券建档程序

1. 决定初始价格区间。审查发行人初步披露以及现行市场利率后，发行人与牵头承销商确定发行利率区间，并将签署一份确认建档价格区间的函件。

2. 认购要约。牵头承销商在发行前一天向承销团成员发送认购声明，并向市场发布声明。该认购声明包括债券的主要条款、债券的利率范围、认购时间和过程、债券配售和支付条款、账簿管理人的联系信息、指定付款账户和其他信息。

3. 配售和支付。如果发行使用与公开发行相同的簿记建档程序，则每位认购人提交一份具有约束力的书面认购要约。账簿管理人通知发行承销商按债券规模和建档流程确定的发行利率。

4. 分配。账簿管理人根据投资者需求设定分销期间，然后安排承销团成员对债券进行分配。分销期开始于建档日，终止于付款最后期限。

5. 上市交易。承销团成员通过发行人、牵头承销商和其他承销商之间订立的协议所述分配，完成对银团外机构的所有配售。债券可以从付款完成后第一个工作日起，在银行间债券市场流通和交易。

IV. 政策建议

通过比较中国银行间债券与国际债券一级市场实践，一方面中国可以通过吸收国际市场有益经验，进一步促进中国市场制度与国际市场制度的接轨，推动中国资本市场对外开放并拓宽资本市场国际合作渠道。另一方面，境外市场可以借此进一步了解中国市场发展现状，熟悉中国现行市场制度，为更多合格的境外发行人和投资人进入中国银行间市场奠定基础。未来，NAFMII 与 ICMA 将持续开展市场交流活动，促进相互了解及互惠互助，以促进两国债券市场的共同发展。

A. 借鉴国际市场信息披露制度的相关经验

信息披露作为协会注册制的核心内容，应持续提高其有效性和完善性，以不断提高投资者保护水平。国际市场上向机构投资者发行证券的信息披露要求较向零售投资者发行相比更为简易。随着中国实体经济和市场发展的需要，可考虑根据投资者的需要，简化不必要的披露要求，合理降低信息披露成本，推动注册信息披露与持续信息披露的整合。国际市场的中期票据项目和储架发行制度在一定程度上对中国银行间债券市场有一定借鉴意义。

B. 进一步促进尽职调查工作的规范化

尽职调查的市场惯例是各方参与者在长期业务实践中逐步摸索、发展并总结而成的。对照国际市场的经验，中国将进一步促进尽职调查工作的规范化，充分发挥律师和会计师在各自专业领域的优势，适当提高其尽职调查参与度。另外，在总结市场经验和一般做法的基础上，组织市场成员制定相关行业标准或者操作指引等，并根据市场需求不时更新，便于市场成员更加规范地开展各项业务。

C. 进一步简化发行流程，并加强发行环节自律管理

借鉴参考国际市场簿记建档的经验有助于完善中国银行间债券市场发行流程。NAFMII 将进一步优化国内市场发行流程，对符合条件的优质发行企业提高发行效率，加强发行环节中的自律管理；同时借鉴国际事中事后管理理念，简化注册环节信息披露与评议要求，提高包括簿记建档环节在内的整体发行工作的效率。

同样地，国际市场参与者和政策制定者对中国银行间债券市场的簿记建档流程也较为关注，该业务流程对提高国际市场簿记建档制度的透明度也能提供一定的新思路。

VI. 附件

A. 国际债券资本市场实践

1. 尽职调查

2. 募集说明书内的信息披露

3. 国际债券发行薄记建档流程

A. 国际债券资本市场实践

1. 尽职调查：

背景

尽职调查是在证券发行时，债券承销商为了确保证券发行使用的披露文件的准确性和完整性，而独立或与发行人一起进行的调查过程。此披露文件被称为募集说明书。

尽职调查过程涉及收集、组织和检验发行人的相关信息、债券自身的内容及其他为投资者做出明智投资决策所可能需要的信息。

本质上，尽职审查是对发行人业务、财务状况及前景的调查。

承销商想要确保：

（i）募集说明书中的所有重大事项信息是准确的（这个过程通常被称为“查阅检验”）；

（ii）募集说明书没有遗漏任何重要事实（换言之，所有重要信息都正确披露）；和

（iii）没有任何即使充份披露也会影响发行的其他事项。

为什么要做尽职调查?

尽职调查的参与者期望避免承担不必要的责任，可以通过尽职调查的行为来驳回因疏忽错误陈述而带来的任何索赔。

可能面临的索赔特征

大多数证券监管体系要求使用披露文件或募集说明书来募集说明书发行或募集债券。发行人承担主要责任确保募集说明书的完整性和准确性。

索赔细节将取决于债券出售或上市所在地的相关法律。

索赔往往分为三类：披露文件包含虚假陈述的索赔、相关消费者保护法规规定的严格赔偿责任或其他赔偿责任、有关渎职的索赔。如果所有重要材料均已披露，索赔的成功性将会很小。某些司法制度下，只要发行人和主承销商在募集说明书的编制中合理尽责，将对发行人和主承销商有具体的保护和免责条款。

如何进行尽职调查?

在国际资本市场，承销商通常通过“审阅验证”和“尽职调查”来履行对其合理尽职的要求。审阅验证和尽职调查需要关注不同的问题：

（一）审阅验证

审阅验证是指检查募集说明书中所有的陈述以确保它们的真实性、准确性且没有误导内容。承销商通常会在得到（如若干交易所等）上市场所要求下才会采用此程序。否则，他们不一定需要或开展审阅验证的工作。

（二）尽职调查

尽职调查通常比审阅验证涉及更广泛的发行人和其业务的信息，包括：（1）财务尽职调查、（2）法律尽职调查、（3）业务尽职调查。

承销商和他们的律师将管理整个尽职调查过程，但他们主要负责业务尽职调查（以及在较小程度上的财务尽职调查）。虽然实际的程序因发行人的不同而变，但是几乎所有的公开债券发行都会把发行人的审计师出具的安慰函作为财务尽职调查一部分，把来自法律顾问们的一个或多个法律意见作为法律尽职调查的一部分。

大量发行人的相关信息可以从他们对尽职调查问卷的答复中挖掘出来。问卷的设计包括向发行人索要文档的复印件，要求发行人书面答疑，以及要求发行人在尽职调查会议上讨论发言。与发行人的管理层人员面谈可以是尽职调查中非常重要的一个环节。

尽职调查的种类有哪些?

债承销商会和律师紧密合作以确保他们理解发行所涉及的业务问题，从而能够把充分的保护条款如陈述、保证和承诺等都包括在法律文件中。相应的，各方将与发行人，本地律师及审计师紧密合作。

以下是财务、法律和业务尽职调查的总结：

（1）财务尽职调查

财务尽职调查的重点是确保所有包括在募集说明书的财务信息是准确和完整的。发行人的审计人员将详细地审查和验证发行人的财务报表和在募集说明书中披露的所有财务信息，并发出安慰函。安慰函记录了审计师的审计程序和审计结果。虽程序有所不同，但通常包括审查前一个财务年度的财务报告后的账目，并与管理层讨论自最新一次募集书更新以来出现的相关负面结论和财报中未涵盖的负面变化。

承销商对如审计人员之类的第三方专家的依赖程度也是因国家地域管理法规的不同而各异。例如美国的市场需求更严格的尽职标准，尽管不要求承销商达到专业会计师的水准，但是需要警惕审计财务报表数据自相矛盾的情况（美国世通事件后称为“红旗”– 详见下文）。如果有一个红旗出现，那么承销商需要查看审计结果更深一层的内容，启动进一步调查。

欧洲市场审计师的安慰函形式是相当标准化的。ICMA 与英国的主要会计事务所合作制订了一个标准形式的

安慰函（附带一个标准形式的安排函），适用于单次的投资级别债券发行。在美国市场，如果是以 144A 规则发行债券，则承销商使用 SAS 72 规格的安慰函。该安慰函可以在最新审计或审阅财务报表公布 135 天内提供。

世通公司 2004 诉讼：

尽管 1933 的《美国证券法》的第 11 和 12 部分，经修订的后（《证券法》）规定募集说明书若存在虚假和误导性陈述内容，过错方对后果承担严重的责任，但是这两个部分都允许承销商通过展示他们进行了合理的尽职调查来豁免责任。第 11 节更允许承销商依赖专家的报告，如财务报表的审计报告。然而，在世通公司诉讼案中科特法官（Judge Cote）认为，承销商在出现严重的“红旗”的情况下，不能仅依靠审计过的财务报表来满足尽职调查的需求。法院还认为，仅靠审计师安慰函不足已证明承销商已经对未经审计的中期报表履行勤勉尽职的要求。

科特法官并没有提出怎样的的尽职调查算足够充分，也没有指出什么样的重要信息将构成“红旗”，需要进一步的调查。通常，遇见此类相关问题需要展开法律调查，根据相应的法律法规出具法律意见。法院可能会质疑承销商是否有足够的事实来证明完成了合理的尽职调查。

（2）法律尽职调查

发行人必须依法成立法人实体，有效的存在且有发行证券的能力（例如，它的注册文件没有规定禁止发行证券）。承销商及律师也要确保债务发行的文件经过发行人正式的授权，并合法有效、有约束力且可强制执行。大量的有关发行人的信息是从发行人填写的尽职调查问卷中获得。问卷可以要求发行人提供相关文件的副本或可以要求发行人在尽职调查讨论会上予以回应。与发行人的管理层访谈是法律尽职调查的一个重要环节。

在美国的发行交易中（例如根据 1933 的《美国证券法》（经修订）（“证券法”）第 144A 规定向投资者出售票据），发行人也可被要求建立存储所有重大合同的数据库供承销商律师审查。相关律师有时也被要求调查和确认新的债券发行不会导致发行人违反任何现有的高级债券合同以及其他重要合同；本程序最有可能用于首次发行人或者一笔含有高度结构化约束条款的债券，如高息债券。

此外，当按证券法 144A 规则发行债券时，双方律师（发行人和承销商律师）都会被要求提供一份 10b–5 法律意见函，这是律师以未发现发售文件内存在重大错误陈述及遗漏这种否定形式出具意见（但不是法律意见）的否定式保证函。

（3）业务尽职调查

这项调查涉及到承销商调查研究发行人业务前景。承销商可以看发行人的优势和劣势、生产、销售、营销和未来的战略发展研究。分析将分为回溯性的和前瞻性的。前瞻调查要求承销商确定发行人有足够的信誉。通常要研究发行人的业务计划、预测和预算，并确保每一项都是依据充足恰当的假设。承销商会和发行人的管理层进行适当的讨论。如果发行人的评级很高，一般不会展开此类的尽职调查，除非有合理的理由怀疑其评级的准确性。对于低评级的发行人，承销商则需根据内部守则对其进行信用分析。

回溯性尽职调查的程序（即回顾历史披露的准确性）将在下面“尽职调查程序”中详细阐述。

审阅验证和尽职调查

审阅验证和尽职调查的主要目的是确保发行人准备的募集说明书公平和公正体现发行人的业务，不存在误导信息及遗漏重要信息。

在有限责任的前提下，选择审阅验证或者尽职调查需要注意两点。虽然审阅验证和尽职调查的程序通常由承销商决定，但全面、准确的尽职调查是发行人和承销商的共同利益。

尽职调查程序

尽职调查的程序和程度取决于：发行人的业务性质、发行债证的类别、债券投资者类型以及发行所在地。

《ICMA 一级市场手册》的 R3.3 及 3.4 条指引列出有关尽职调查的推荐建议：

“R3.3 应当根据每一次发行的具体情况，仔细考虑并确定适度的的尽职调查。

3.4 因为不同性质的发行所需要的尽职调查程序会有很大的不同（例如，程序的多寡深浅取决于发行证券的类型，证券所附带的权利，证券发行人及其业务的性质），因此无法详细规定每次发行是否需要做尽职调查或者采取哪些具体程序。”

国际资本市场承销商通常会遵循 ICMA 的指引。

在考虑什么是“适度”的尽职调查时，这篇指引列出了特定条件下合理勤勉尽职的标准，包括在 ICMA 指引里列出的因素。

因此，一个经常发行债券的高评级发行人可能会接受非常有限的尽职调查，而在新兴市场首次发行且评级不高的发行人或会接受更高程度的尽职调查。

通常欧洲债券市场的承销商可按特定的情况，适当地采取以下程序进行尽职调查：

● 首次发行或者不经常发行的发行人在起草新的募集说明书的时候，承销商发出尽职调查问卷，参加一系列与发行人高层管理人员的会谈。问卷将设计的非常详细，以获得发行人业务有关的所有方面尽可能多的信息。相反，如果针对有发行经验的频繁发行人，那么准备阶段只需要更新之前的募集说明书。

● 可能的尽职调查步骤有：

（i）发行前，承销商和发行人的高级管理层之间电话会议。这个会议的目的是要确认发行人没有显着影响发行的情况，即如果它们被公开，可能会影响投资者的投资决策。可能所有发行人都会采纳本程序，但可能一些高评级频繁发行人可以例外。

（ii）采取尽职调查会议的形式。会前发放正式的尽职调查问卷，并由经授权的管理人员作答，可以用当面会议或电话会议的形式。本程序可用于信用评级较好但不经常发行的发行人。

（iii）作为审阅验证程序的一部分，可能会保持对募集说明书相关内容的及时更新并与相关管理层讨论具体内容。目的是检查募集说明书是否含有任何重大错误陈述并确保没有遗漏重要的信息资料。这种审阅的方式适合初次发行的发行人，也适用缺乏准备披露文件的经验的发行人，和相当长的时间内没有更新披露的情况。

（iv）审阅由承销商的律师要求的发行人提供的文件。这些文件通常包括发行人的注册和授权文件，公司某些重要的商业合同和借款文件。发行人可以建立数据库来满足承销商律师的要求。

（v）承销商也可以内部的信用分析师对发行人进行信用分析。

（vi）作为承销协议的一部分，承销商将希望得到适当的陈述和保证。这些可以在债卷发行缴款的时候从发行人处获得管理层申明用以确认。当发行人涉嫌违反陈述和保证的时候，承销商可以要求发行人赔偿。

（vii）虽然在欧洲市场相对少见，其他程序可能包括律师审查发行人的主要商业合同和其他重要公司文件，现场考察发行人的关键设施以及和重要的第三方的会谈，如监管机构、供应商客户或银行。这些是到美国销售证券的一些标准程序。

美式的尽职调查

以下列出的调查程序适用于首次在 144A 市场发行的发行人，而频繁发行人通过 SEC 自主上架自动发售来获取市场投资需求的尽职调查程序会明显的不同。

在美国发行所需要的尽职调查程序和上面列出的程序差别不大，除了在调查的深度上略有不同。主要的区别是，在欧洲发行的尽职调查只需要满足某些程序即可，而在美国，几乎所有的尽职调查程序都可能会使用到。

根据美国《1933 证券法》（《证券法》）和《1934 证券交易法》（《交易法》），彻底详细的尽职调查可以构成辩护基础。在美国，不仅是发行人，承销商也同样对募集说明书的内容负有责任。因此美国的尽职调查是非常彻底和详尽的。律师会出具“10b-5 法律意见函”向投资者表明，在律所准备相关债券注册的过程中，或在 144A 规则的证券发行的背景下，没有任何事项致使他们相信募集说明书包含任何重大错误陈述或遗漏重要事实。

与欧洲的尽职调查一样，任务的分配反映了所涉及的各方的专业知识（即投资银行家，律师和审计师）。当起草募集说明书的特定章节时，可能需要进一步的专业知识要求（如采矿顾问，航运经纪）。

在尽职调查过程早期，承销商将尽可能地熟悉发行人的行业。承销商会审查发行人所处行业的其他公司的报告文件，包括募集说明书、年度报告和分析师报告。承销商还应考虑将他们的研究分析师“过墙”协助尽职调查。如果行业是受到高度管制的（如保险、通信、银行等），承销商将审查和熟悉该行业的主要法规以及它们如何影响发行人的业务。承销商也会了解该行业所遵循的会计准则以及是否行业间存在差别。发行人的审计人员将协助这些审查。如果方便，承销商和其律师将访问发行人的一个或多个设施（如工厂）以便熟悉业务背景。

承销方律师将列出一个文件清单，要求发行人提供上面指定的文件（如贷款协议、重大合同）。书面文件通常会被送达各个律师供审查，必要时也可进行实地考察。

承销商通常会在起草详细的募集说明书书之前与发行人的主要负责人员开会沟通。发行人通常会被要求请其各主要附属公司或部门的主要负责人员给承销商和律师做详细讲解以便帮助他们熟悉发行人的业务概况。承销商和律师会要求和发行人负责某些重点领域的行政人员或雇员进行单独的会谈，讨论例如具体的业务、政府监管、环保要求、员工关系及知识产权诉讼等等。承销商还会与发行人的首席执行官和首席财务官讨论发行人的宏观业务发展，并了解他们对发行人优势和劣势的个人观点。

发行人的审计人员在尽职调查中主要负责两块内容：（一）作为募集说明书审计部分的专家，提供符合美国 SAS 72 规定的安慰函；和（二）提供发行人的财务报表信息，会计记录、会计政策和使用情况。这两个角色中的后者帮助承销商对发行人的业务进行适当的调查，然而近期美国审计师试图通过增加自我限制的方式减少参与尽职调查。美国审计人员目前正在与承销商和其他市场参与者讨论将来在尽职调查过程中的参与程度，但是还在等待这些谈判的结果的同时承销商应该询问审计人员以下的问题：

● 会计政策的变更或可能的变更（无论是发行人或发行人所在行业要求）；
● 可能存在的欺诈或不法行为；
● 会计控制的充分性；
● 发行人的财务和会计团队的能力；
● 公司向上汇报的氛围和环境；及
● 年度管理报告内提到的问题。

考虑到审计人员对发行人及其业务知识的熟悉了解，最好是在起草会议阶段就让会计师尽量参与。

承销商还应考虑与发行人的主要贷款人，以及发行人的主要供应商和客户见面。这些讨论应该在没有发行人陪同的情况下展开（承销商可以酌情允许发行人律师的参加）。事后可告知发行人讨论结果。这些讨论，特别是与发行人的客户和供应商之间的，应该是在承销商对发行人以及其所处行业有一个很好的了解的基础上展开。

大多数发行，发行人应披露其管理人员和董事的详细信息。标准程序是发行人律师准备针对行政人员和董事的调查问卷。承销商律师将审阅完成的调查问卷，比较回答与目前正在起草的募集说明书中的信息。如有差异，则需要具体了解原因。

尽职调查的重要性不仅体现在在发行开始时讨论承销协议（例如陈述和保证条款）和安慰函，而且体现在发行的后期阶段起草和审查募集说明书的阶段。为了体现出它的重要性，承销商律师通常会准备一个尽职调查备忘录。这份备忘录记录了已被审阅材料的情况。这不仅仅在发行之前很重要，在发行之后更是提供了完整的尽职调查过程审核记录。承销商的律师也可以编制尽职调查文档来记录发售相关的尽职调查（如诉讼），材料来源。这个文档通常包含一份所有要求发行人提供的文件；所有审核发行人提供的文件的干净副本（无注解）；以及一份尽职调查的备忘录。

文件清单

下面这个清单总结了一些承销商就美式尽职调查而经常要求发行人提供的文件类型，且无意涵盖一切情况，也不一定产生定论。谨请注意，承销商并非在每次交易中也要求发行人（尤其是经验较丰富或频繁发行人）提交全部该等文件。

(i) 公司的帐簿和记录：发行人及其他相关集团公司（担保人和国外分支机构登记文件）的注册文件；董事，股东及委员会会议记录；对股东和其他股东协议或报告。

(ii) 财务信息（相关集团公司）：财务报表（内部报告和审计，以及相关的信件往来）；退税单；债务文件 / 协议。

(iii) 员工的材料：如就业协议；咨询协议；工会或其他员工表示相关文件；员工手册；工薪和小时工计划；组织信息（所有董事及高级管理人员详细的组织结构图和列表）。

(iv) 或有负债（不确定的债务）：诉讼；监管合规。

(v) 合同，协议及其他安排：如超出日常业务的协议（合资）；重点客户合同；关键的供应合同；材料协议涉及产品质量的保证，分销，广告和制造协议）。

(vi) 知识产权：商标，许可证，专利，版权和相关协议；未决诉讼；协议涉及雇员和咨询公司的所有权。

(vii) 厂房，物业及设备：房地产文件；个人财产的文件（如租赁协议）；相关的评估 / 评价。

(viii) 保险。

(ix) 市场信息：例如，竞争对手的细节和竞争市场分析；销量；样本客户的合同；10 大供应商名单；研究和发展计划；与最近三到五年的公司的竞争对手谈判的信件和其他文件。

(x) 上市公司的材料（如适用）：例如，美国证券交易委员会提交的文件；最近三到五年的代理声明；任何证券法登记报表，包括任何修订后有效；最近期的证券分析师研究报告；最近三到五年的新闻稿。

(xi) 其他：如任何股东权利的协议；对子公司，合资企业，合作伙伴等的描述报告，例如未来收购或处置预案；未来的重组计划；公司信息管理系统的描述（包括任何未来的改革计划）。

2. 募集说明书内的信息披露

募集说明书是发行人用作招揽交易投资者的主要法律及市场推广文件。募集说明书必须全方位涵盖交易的事宜，包括发行人的概览、票据的条款和条件、风险因素及财务报表。

相比根据证券法 S 规例进行的交易，根据 144A 规则进行的交易通常会为了达到美国 10b-5 的标准而进行尽职调查，此举更加紧从美国证券交易委员会的惯例。因此，144A 规则交易的发售文件普遍会通过“管理层讨论及分析”及“行业概览”披露信息，而这两部份在只是 S 规例交易的发售文件中却并不常见。

根据S规则发售证券，在信息披露上并无法定要求，不过，就中国发行人而言，发售备忘录一般包含以下信息：

1. 有关以下各项的概要：
   a. 业务概览；
   b. 过去三年的财务报表（包括损益表、资产负债表和现金流量表）；及
   c. 票据的条款概要。
2. 摘录自发行人简介一节的业务概览。财务概要将 3 年以来的财务数据并列以便进行比较。条款概要则只重点讨论条款的关键部份，通常是对应稍后章节的详细条款。
3. 涵盖以下内容的风险因素：
   a. 发行人的业务及财务表现；
   b. 发行人经营业务的行业；
   c. 相关司法管辖区的监督和监管；及
   d. 证券及其交易市场的特征。

发行人必须披露可能影响投资者决定及投资的未来价值的任何信息，从而投资者能够作出知情决定。虽然披露风险因素的目的，是为了保障发行人免于承担投资者的责任，但通常还考虑到市场推广的因素。

4. 阐明（经考虑发行价的折让，并扣除费用及开支后）约收到的所得款项净额，以及其用途的所得款项用途。
5. 涵盖（如纳入发售备忘录的最新财务报表所示的）发行前资本状况及（发行后的）备考资本状况的资本价值，以显示某次发行将如何影响发行人的资本结构。
6. 票据的条款及条件，包括利息、付款频率、计算基础和到期日。
7. 包括以下各项的契约：
   a. 财务契约（虽然一般只适用于高息债券发行的情况）、消极担保、针对管理权变更而设的“认沽证”，及 / 或其他重大的法律规定；
   b. 违约事件；及
   c. 任何票据可予赎回的情况（如有）。
8. 在相关情况下，包括以下各项的发行人业务简介：
   a. 优势和策略；
   b. 业务模式；
   c. 产品及服务；
   d. 客户；
   e. 供应商；及
   f. 公司结构（包括主要营运的附属公司及联属机构）。

9. 附带描述相关监管环境的监督和监管信息。
10. 简介公司治理、管理层成员及其能力的管理层信息，尤其是：
    a. 董事及管理人员的简历，彼等在发行人及行内的经验；
    b. 董事会结构及董事委员会；及
    c. 管理层的股份拥有权及股票期权计划。
11 或会（或不会）有利于发行人的关联方交易。
12. 包括审计报告、财务报表全文及财务报表附注的财务状况（又称“F-pages”）。
13. 旨在以管理层的角度陈述历史业绩及公众对业绩的预测，并交代近期财务表现状况的管理层讨论及分析。
14. 包括有关市场及竞争环境的行业信息。来自第三方的数据必须是从信誉良好的来源获取，并可引用有关数据。

总体而言，美国及中国的发行制度皆“以信息披露为基础”：两地非常重视制度的透明度，及给予投资者信息，从而投资者可以作出知情的投资决定。就此而言，在会议上就债券募集说明书而重点披露的信息，可概括为以下数方面：

1. 业务信息。投资者需要知道他们投资的是什么业务。
2. 证券发行信息。投资者需要知道他们投资的是什么金融工具，包括金融工具的条款及条件。
3. 财务信息。募集说明书除了从定性角度陈述业务外，投资者亦需根据 S-X 规例，了解公司的财务信息，以及管理层（参阅下文“管理层讨论及分析”）和外部审计 / 会计师据此而进行的工作。
4. 法律和其他信息。就债券发行而言，交易中还有其他可对投资者的投资决定构成重大影响的因素。这些信息必须纳入募集说明书中。例如有关税项的信息披露。

以下是 144A 规则交易募集说明书的常见目录内容：

- 若干定义、惯例和币种介绍
- 有关呈列财务信息的通知
- 前瞻性声明
- 民事责任的强制执行
- 概要
- 证券发行
- 合并财务及营业数据概要
- 风险因素
- 所得款项用途
- 收益相对固定费用的比率
- 资本价值
- 公司历史与企业架构
- 精选合并财务及营业数据
- 财务状况及业绩的管理层讨论及分析
- 业务
- 监管
- 公司董事
- 公司行政管理人员
- 主要股东
- 关联方交易
- 重大负债的说明
- 票据的说明
- 评级
- 税项
- 分派计划
- 转让限制
- 法律事宜
- 独立注册会计师事务所
- 一般信息
- 合并财务报表索引

国际债券发行的市场推广

新发行人或不经常发行的发行人通常通过与国际投资人开展全球路演会议，为国际债券发行进行市场推广活动。举行路演是为了向投资者介绍公司的信用亮点、业务策略及近期发展，尽量提高投资者对拟定发行的注意及投资兴趣，并引导投资者在联席簿记人设定的定价范围内购买证券。

当发行人公布有关讯息后，联席簿记人的销售团队便联络各投资者，视情况为他们安排会议和投资者午餐会的时间。就根据 S 规例进行的交易而言，目标投资者一般都位于亚洲及欧洲，所以 S 规例交易的路演地点通常包括香港，新加坡及伦敦。就 144A 规则交易而言，美国的合资格机构投资者亦是发行的目标，因此，除了香港，新加坡及伦敦外，路演团队还前往纽约、波士顿，有时更会到洛杉矶和旧金山。

当联席簿记人的销售团队与投资者会面后，便会与各投资者跟进，寻求他们的意见。通过路演收集的意见，通常都是在建薄流程开展前，供联席簿记人制定定价观点的重要指标。凭借投资者给予充分和具建议性的意见，联席簿记人厘定“初始价格指引”（这可能会在交易过程中不断演变），以便在取得发行人的批准下开始薄记建档流程。

	S 规例	144A 规则
地点	香港 新加坡 伦敦	香港 新加坡 伦敦 纽约 波士顿 洛杉矶（非强制） 旧金山（非强制）
时间 形式	2–3 天的路演 个别会议 多方会议 午餐会（只限香港及新加坡）	4–5 天的路演 个别会议 多方会议 午餐会（只限香港及新加坡）

3. 国际债券发行薄记建档流程

国际债券发行薄记建档流程实质上是联席簿记人与全球投资者之间为债券厘定市场价格的过程。联席簿记人在薄记建档流程的目标，在于为发行人争取最佳价格及发行规模目标，配合发行人的发行规模、定价、年期、分派及持续的市场目标。投资者在薄记建档流程的目标，就是厘定及落实达到投资者风险和回报目标的价格。

薄记建档流程一般以公布初步价格指引或（如账簿尚未建立）初步价格观点展开。初步价格指引是根据于路演收集的意见、市场状况及在薄记建档当日可比较票据在二级市场的交易水平，并权衡发行人的定价及发行规模目标而厘定。为了加强势头，向市场公布的初步价格指引区间可能比发行人及联席簿记人的定价目标范围“较阔”（即可为投资者产生较高收益）。此举是为了鼓励更多投资者参与薄记建档流程，提升订单数量。

在对市场公布初步价格指引后，每名联席簿记人的销售团队将开始与投资者沟通，收集他们对订单及指示性定价水平的看法。投资者随即根据初步价格指引形成对订单的观点，一般他们会在其各自的订单中新增定价限度。

对于大多亚洲投资者目标投资的美元交易而言，薄记建档流程从亚洲开始然后延伸至欧洲及美国（只限144A 规则交易）。不同地点的投资者会向联席簿记人的销售团队提供其各自的订单及定价目标。然而，（就若干美国 144A 规例 / 于美国证券交易委员会登记的交易而言）薄记建档流程有时亦可从美国或（就欧元交易而言）欧洲开始，再返回亚洲。

当联席簿记人已收集足够的订单，且进一步了解投资者对定价的看法后，联席簿记人便决定及向市场公布最终价格指引。最终价格指引将大大接近最终定价。凭借最终价格指引，投资者将其最终订单及定价限度交予联席簿记人，并由联席簿记人决定及确认拟定交易的最终价格及发行规模。

当所有投资者确认订单后，联席簿记人将根据发行人的偏好及联席簿记人对投资者的理解（部份是根据过往交易的行为判断），开始分配债券予投资者。一般而言，“买入债券作持有用途的”投资者通常会比“投机”投资者优先获发债券，后者是指可能会在票据开始在二级市场交易时，随即出售票据以销定利润的投资者。

以下是簿记人分配新发行的债券时将会考虑的若干一般因素：

- 发行人的特定偏好
- 投资者对发行规模的明确兴趣（不论是绝对或相对投资者的投资组合或受管理资产而言）
- 投资者的历史交易量及一般在过往发行的买卖行为
- 投资者对发行人及特定发行感兴趣的性质及程度，例如他们参与路演的程度，提供意见的素质及时间是否合时
- 投资者表示兴趣的时间是否合时
- 有否任何迹象显示或有理由相信投资者夸大了其预期缩减发行规模的真实兴趣
- 投资者所属的类别或种类（例如共同基金、银行、对冲基金、交易公司）；及
- 投资者有否就发行作出主动查询，以及投资者参与该次发行的重要性

- 投资者对发行人及特定发行感兴趣的性质及程度，例如他们参与路演的程度，提供意见的素质及时间是否合时
- 投资者表示兴趣的时间是否合时
- 有否任何迹象显示或有理由相信投资者夸大了其预期缩减发行规模的真实兴趣
- 投资者所属的类别或种类（例如共同基金、银行、对冲基金、交易公司）；及
- 投资者有否就发行作出主动查询，以及投资者参与该次发行的重要性

债券分配不应根据公司与某名特定投资者客户开展业务而收取或预期的交易量、佣金或其他收入而决定。

最后，当确定全部因素后，交易便被视为已厘定价格。就投资级别的交易而言，牵头经办人亦需在定价时锁定国债利率以厘定拟定交易的最终息率。

国际债券发行薄记建档流程时间表（供 144A 规则 / S 规例国际债券发行参考）

就亚洲交易而言，定价程序一般在伦敦（S 规例交易）或纽约（全球 / 144A 交易）午后进行。在这两种情况下，全球投资者均有机会考虑参与交易。以亚洲本地货币进行的交易之定价程序会在亚洲交易时间进行。有时，根据 S 规例进行的美元交易亦会在亚洲时区定价，突显亚洲投资者基础日益重要。

以下是 144A 交易的标准时间表：

时区			
中国 / 香港	英国 (1)	纽约	主要工作事项
上午 8:30	–	–	● 与公司举行电话会议决定是否宣布交易 ● 公司决定初始价格指引
上午 09:00	–	–	● 向市场公布初始价格指引
下午 02:30	–	–	● 联席簿记人向公司更新最新市场动态及订单状况
下午 03:00	上午 08:00	–	● 伦敦开市
下午 04:30	上午 09:30	–	● 在投资者申购的订单足够支持发行规模的前提下，亚洲建簿截止 ● 联席簿记人向公司更新市况及欧洲投资者订单状况
下午 05:00	上午 10:00	–	● 向市场公布最终价格指引
下午 06:00	上午 11:00	–	● 专注欧洲建簿程序
下午 08:00	下午 01:00	上午 08:00	● 美国开市
下午 10:00	下午 03:00	上午 10:00	● 专注美国建簿程序
下午 10:30	下午 03:30	上午 10:30	● 联席簿记人向公司更新市况及整体投资者订单状况
下午 11:00	下午 04:00	上午 11:00	● 决定最终息差（投资级别）/ 息率（高息）及规模 ● 启动交易并开始分配债券予投资者
下午 11:30	下午 04:30	上午 11:30	● 公布投资者分配结果
下午 11:45	下午 04:45	上午 11:45	● 与发行人管理层进行定价前的尽职调查会议
凌晨 00:00(第二天)	下午 05:00	下午 12:00	● 定价 (2)
上午 00:15(第二天)	下午 05:15	下午 12:15	● 发行通函终稿定稿
上午 00:30(第二天)	下午 05:30	下午 12:30	● 执行及签署购买协议（美国惯例） ● 执行及签署安慰函（美国惯例）
上午 00:45(第二天)	下午 05:45	下午 12:45	● 契约定稿（美国惯例），欧洲债券惯例是在认购后三日（T+3）执行文件

注：(1) 英国时间表按夏令时编制。(2) 最终定价时间将取决于定价日的市场状况及投资者订单薄记情况。

B. 中国银行间债券市场实践

1. 尽职调查

2. 信息披露的一般要求

3. 簿记建档的一般流程

B、中国银行间债券市场实践

1、尽职调查

A. 尽职调查的定义

债务融资工具尽职调查是指各相关中介机构遵循勤勉尽责、诚实信用原则，通过各种有效方法和步骤，对发行人进行充分调查，掌握其主体资格、资产权属、债权债务等重大事项的法律状态和企业的业务、管理及财务状况等，对发行人的还款意愿和还款能力作出判断，以合理确信注册文件的真实性、准确性和完整性的行为。

随着中国债券市场的逐步发展，以及银行间债券市场规模的不断扩大，为规范银行间债券市场非金融企业债务融资工具主承销商对拟发行债务融资工具的企业的尽职调查行为，提高尽职调查质量，2008 年 4 月，根据中国人民银行《非金融企业债务融资工具管理办法》，中国银行间市场交易商协会（简称“交易商协会”）制订了《银行间债券市场非金融企业债务融资工具尽职调查指引》（简称“《尽职调查指引》”）和《银行间债券市场非金融企业债务融资工具中介服务规则》（简称“《中介服务规则》”），上述规则指引的颁布进一步明确了尽职调查的内容、方法、原则和要求，为规范尽职调查工作起到了积极作用。

B. 尽职调查的作用

(i) 尽职调查对投资者的作用

尽职调查对投资者的作用主要在于减轻投资者与发行人之间的信息不对称，为投资者识别投资风险提供信息保证，并帮助投资者对债务融资工具进行合理定价。

(ii) 尽职调查对发行人的作用

通过尽职调查，可以帮助发行人向市场提供更为充分可靠的信息，有助于真实反映发行人的风险水平，推动债务融资工具合理定价。

(iii) 尽职调查对各中介机构的作用

主承销商尽职调查是债务融资工具尽职调查的基础和核心。主承销商尽职调查对其他中介机构的主要作用在于可以为其他中介机构的尽职调查提供总体方向性指引，并为其提供全局性参考。

C. 尽职调查的主要内容

在中国银行间债券市场，关于财务和业务方面尽职调查主要由主承销商来开展，会计师予以支持。

主承销商尽职调查是债务融资工具尽职调查的基础和核心，相对于其他中介机构的尽职调查，主承销商尽职调查的范围最广，质量要求最高。

主承销商尽职调查的目的是对债务融资工具注册文件的真实性、准确性和完整性进行审慎核查，确保债务融资工具发行的信息披露质量，并为其就发行人发行债务融资工具出具推荐意见提供基础。主承销商尽职调查的核心意义是为减轻债务融资工具的信息不对称，促进市场效率的提高。具体包括减轻投资者与发行人之间的信息不对称，促进债务融资工具市场合理定价，降低市场运行成本；减轻交易商协会与发行人之间的信息不对称，提高自律管理效率，降低自律管理成本；发掘发行人投资亮点，促进发行人提高信息披露和规范运作能力，协助发行人降低融资成本；降低主承销商面临的监管风险、承销风险和声誉风险；为其他中介机构的尽职调查提供总体方向性指引和全局性参考。

在中国银行间债券市场，债务融资工具的募集说明书主要由主承销商协助发行人撰写。发行人律师开展尽职调查并依据调查结果出具法律意见书，所涉及的事项主要有：债务融资工具的发行是否已经履行了中国银行间市场交易商协会规定的注册程序，取得了交易商协会颁发的接受注册通知书；发行人是否已经按照其章程或章程性文件作出了合法有效的申请注册和发行债务融资工具的决定；相关承销安排及法律文件的合法性等。

D. 尽职调查的主要阶段

尽职调查作为各中介机构的一项专门职责，参与债务融资工具的各中介机构需履行各自的专业职责，恪守职业道德。在进行尽职调查的过程中，各中介机构需要遵循以下原则：（1）独立性原则；（2）全面性原则；（3）客观性原则；（4）重要性原则；（5）灵活性原则；（6）谨慎性原则；（7）保密性原则；（8）合作原则。

主承销商债务融资工具尽职调查工作一般分为初步尽职调查、全面尽职调查、跟踪尽职调查三个方面。初步尽职调查是指主承销商在承揽业务过程中为判断拟发行人是否可以发行债务融资工具而进行的基本调查；全面尽职调查是指主承销商对发行人进行全面了解，充分熟悉其经营情况及其面临的风险和问题，并有充分理由确信其可以发行债务融资工具，以及确信其注册文件和发行募集文件真实、准确、完整的过程；跟踪尽职调查是指在债务融资工具存续期内，主承销商需要持续关注企业的盈利情况、行业趋势，以及尽职调查中提出问题的整改情况，视整改情况调整方案。

E. 尽职调查的具体程序

根据交易商协会现有自律规则，结合市场实践惯例，尽职调查工作流程主要包括以下几个方面：

(i) 组建工作团队：调查团队主要由主承销商总部人员构成，分支机构人员可参与和协助；

(ii) 工作计划制定及项目启动会议：工作计划主要包括工作目标、工作范围、工作方式、工作分工、工作时间、工作流程、参与人员等；

(iii) 尽职调查清单提交：提交尽职调查清单是尽职调查工作开展的重要步骤，需要发行人按照尽职调查清单准备相关材料，并在约定的时间内将材料提交给尽职调查工作团队；

(iv) 访谈：在对取得的尽职调查资料进行初步分析的基础上就资料中的疑问以及部分通过访谈互动有助于深入了解企业信息的问题可汇总成访谈提纲，提前提交企业；

(v) 形成尽职调查结论：主承销商应根据取得的尽职调查资料和现场访谈的记录，整理工作底稿；

(vi) 跟踪尽职调查：分为定期跟踪尽职调查和不定期跟踪尽职调查。

F. 尽职调查的文件清单

以下是常见的尽职调查文件清单，仅作为参考：

(i) 公司基础资料

（1）公司章程；（2）公司历史沿革简要介绍、股权结构图；（3）营业执照副本、组织机构代码证；（4）内部组织机构设置、部门职能说明；（5）董监高名单及其简历；（6）员工年龄和学历构成；（7）公司所获得的各种业务资质；（8）完税证明。

(ii) 公司业务资料

（1）业务运营资料；（2）工作总结；（3）未来资本支出资料；（4）未来资产并购与出售计划；（5）公司主要内部管理制度；（6）公司战略规划、业务发展计划。

(iii) 公司财务资料

（1）近三年经审计的财务报告；（2）合作银行数量、授信额度、授信内容和期限、未使用授信额度；（3）公司对外担保的明细、重要被担保企业情况；（4）公司关联方和关联交易；（5）公司受限资产情况；（6）公司重大对外承诺；（7）公司存在重大法律诉讼及其他重大事项情况；（8）公司重大理财投资、衍生品交易情况；（9）公司海外资产情况；（10）公司直接债务融资情况及未来融资计划。

(iv) 公司所在行业资料

（1）宏观经济形势对发行人所在行业的影响；（2）当地经济发展状况；（3）行业发展概况、行业竞争情况（主要竞争对手资料）、行业周期资料、重要行业政策；（4）能证明发行人在行业中地位的相关资料。

2、信息披露的一般要求

发行人采用公开发行或非公开定向发行方式注册债务融资工具，应根据相应表格体系的要求准备注册文件，具体注册文件与信息披露要求如下：

i. 公开发行表格体系

1.《表格体系》包括注册文件清单和信息披露表格两部分，具体如下：

（1）注册文件清单列示企业注册或备案发行债务融资工具应向交易商协会提交的书面材料。

（2）信息披露表格列示的内容是对注册文件的最低信息披露要求，包括 M 表（募集说明书信息披露表）、G 表（发行公告信息披露表）、J 表（发行计划信息披露表）、C 表（财务报告信息披露表）、F 表（法律意见书信息披露表）、P 表（评级报告信息披露表）、Z 表（信用增进信息披露表）。各表格以表格中文名称关键字拼音首字母进行命名。

M 表子表格包括 M.1 表（涉及安全生产的信息披露表）、M.2 表（涉及非标准无保留意见审计报告的信息披露表）、M.3 表（涉及关联交易的信息披露表）、M.4 表（涉及重大资产重组的信息披露表）、M.5 表（涉及信用增进的信息披露表）等。P 表子表格包括 P.1 表（主体评级报告信息披露表）、P.2 表（债项评级报告信息披露表）、P.3 表（信用增进机构主体评级报告信息披露表）、P.4 表（跟踪评级报告信息披露表）等。Z 表子表格包括 Z.1 表（信用增进函信息披露表）等。

2. 企业、提供专业服务的中介机构及其经办人员应按有关法律法规、规范性文件和自律规则指引要求，顺序编写注册文件、发表专业意见，并对所出具的注册文件和意见承担相应法律责任。

（1）会计师事务所应依据相关规定对企业进行审计，并出具审计报告。

（2）律师事务所应在充分尽职调查的基础上，在法律意见书中对相关事项发表明确意见。

（3）评级机构应依据《中国人民银行信用评级管理指导意见》、《债务融资工具市场信用评级业务自律指引》等有关规定出具评级报告。

（4）信用增进机构应依据《中国银行间市场信用增进业务自律管理规则》等有关规定出具信用增进文件。

（5）主承销商应按本公告要求，填报注册文件清单及信息披露表格。

3. 主承销商应结合债务融资工具的实际情况，有针对性地填报子表格；企业及相关中介机构应依据适用的子表格，进一步披露相关信息。

4. 企业依据财政部 2006 年颁布的《企业会计准则》及其应用指南等规定（简称“新会计准则”）编制财务报告的，需填报 C 表。企业为特殊行业企业，以及采用企业会计制度、行业企业会计制度等规定（简称“旧会计制度”）编制财务报告的，应遵从相关会计准则、制度的要求，可不填报 C 表。

5. 主承销商应按以下要求填写表格：

（1）注册文件清单：应在注册文件清单表首位置，填写发行企业名称、债务融资工具年限、期数和品种；如“文件种类”对应的文件齐备，则在该文件所在行对应的“注册”或“备案”列下画“√”。

（2）信息披露表格目录：应依据“适用范围”项下所列示的不同情形，勾选适用的表格（可以多选），并填报所选表格。例如：发生过安全生产事故且审计报告为非标准无保留意见的企业，应在 M 表目录中的“选项”下，勾选 M.1 和 M.2，并填报上述表格。

（3）页码：应将披露内容所在文件的具体页码范围填写在“页码”项下。例如：募集说明书中“风险提示及说明”部分位于第 5-9 页，则在填写 M 表时，应在“页码”项下 M-2 所对应的行处填写“5-9”。

（4）备注：对于某些确实不适用的信息披露内容，或需要说明的特殊事项，应根据实际情况，在对应的“备注”项下进行说明。

（5）主承销商有关责任人签章：在确认注册文件清单、信息披露表格填写完整且相应文件全部齐备的情况下，主承销商相关业务部门负责人、团队负责人、经办人员应分别在“主承销商有关责任人签章”处签名或加盖人名章。

（6）主承销商签章：注册文件清单中主承销商签章位置，应加盖主承销商相关业务部门公章。注册文件清单及信息披露表格应加盖主承销商相关业务部门骑缝章。

ii. 注册文件清单

（XX 企业 XX 年 XX 期 XX 品种）

序 号	文件种类	选 项		备 注
		注 册	备 案	
Y–1	注册报告			
	——附营业执照			
	——附《公司章程》及与其一致的有权机构决议		—	
	——附涉密企业的脱密说明（如有）			
Y–2	推荐函		—	
Y–3	募集说明书			
Y–4	发行公告			
Y–5	发行计划（如有）			
Y–6	近一期会计报表			
	20** 年经审计的财务报告及母公司会计报表			
	20** 年经审计的财务报告及母公司会计报表		—	
	20** 年经审计的财务报告及母公司会计报表		—	
Y–7	主体信用评级报告（如有）			
	债项信用评级报告			
	跟踪评级安排			
Y–8	信用增进函（如有）			
	——附有权机构决议及有关内控制度			
	信用增进协议（如有）			
	信用增进机构近一期会计报表（如有）			
	信用增进机构 20** 年经审计的财务报告及母公司会计报表（如有）		—	
	信用增进机构 20** 年经审计的财务报告及母公司会计报表（如有）			
	信用增进机构 20** 年经审计的财务报告及母公司会计报表（如有）		—	
	信用增进机构主体信用评级报告及跟踪评级安排（如有）			
Y–9	法律意见书			
Y–10	承销协议附件		—	
Y–11	偿债资金专项账户监管协议（如有）			
备注				
主承销商有关责任人签章主承销商签章				
协会接收人年月日				

说明：

1. 对于备案项目，只需报送企业及其信用增进机构（如有）最近一年经审计的财务报告和最近一期会计报表。

2. 对于 SCP 项目，企业如已在银行间债券市场披露了有效的企业主体评级报告、近三年经审计的财务报告和近一期会计报表，则可不重复报送。

iii. 信息披露表格

1.M 表（募集说明书信息披露表）

表格名称	表格名称	页 码	备 注
M	企业信息披露基本内容。	□	
M.1	企业属于高危行业企业或近三年及一期发生《生产安全事故报告和调查处理条例》（国务院令第 493 号）、《国务院关于进一步加强企业安全生产工作的通知》（国发[2010]23 号）提及的安全生产事故的，依据 M.1 表进一步披露信息。高危行业范围参见国家安全生产监督管理有关部门规定。		
M.2	企业近三年审计报告存在非标准无保留意见的，依据 M.2 表进一步披露信息。	□ □	
M.3	企业涉及关联交易的，依据 M.3 表进一步披露信息。	□	
M.4	企业涉及重大资产重组的，依据 M.4 表进一步披露信息。	□	
M.5	债务融资工具存在信用增进的，依据 M.5 表进一步披露信息。	□	

序号	信息披露要点	页 码	备 注
M–0	扉页、目录		
M–0–1	本期债务融资工具已在交易商协会注册，注册不代表交易商协会对本期债务融资工具的投资价值作出任何评价，也不代表对本期债务融资工具的投资风险作出任何判断。投资者购买本期债务融资工具，应当认真阅读本募集说明书及有关的信息披露文件，对信息披露的真实性、准确性、完整性和及时性进行独立分析，并据以独立判断投资价值，自行承担与其有关的任何投资风险。		

	本期债务融资工具已在交易商协会注册，注册不代表交易商协会对本期债务融资工具的投资价值作出任何评价，也不代表对本期债务融资工具的投资风险作出任何判断。投资者购买本期债务融资工具，应当认真阅读本募集说明书及有关的信息披露文件，对信息披露的真实性、准确性、完整性和及时性进行独立分析，并据以独立判断投资价值，自行承担与其有关的任何投资风险。		
	董事会（或具有同等职责的部门）已批准本募集说明书，全体董事（或具有同等职责的人员）承诺其中不存在虚假记载、误导性陈述或重大遗漏，并对其真实性、准确性、完整性、及时性承担个别和连带法律责任。		
	企业负责人和主管会计工作的负责人、会计机构负责人保证本募集说明书所述财务信息真实、准确、完整、及时。		
	凡通过认购、受让等合法手段取得并持有本期债务融资工具的，均视同自愿接受本募集说明书对各项权利义务的约定。		
	承诺根据法律法规的规定和本募集说明书的约定履行义务，接受投资者监督。		
	涉密企业应声明：“本公司承诺，本公司发行债务融资工具所公开披露的全部信息不涉及国家秘密，因公开披露信息产生的一切后果由本公司自行承担。”（如有）		
	截至募集说明书签署日，除已披露信息外，无其他影响偿债能力的重大事项。		
M-0-2	目录标明各章、节的标题及相应的页码。		
M-1	**第一章释义**		
M-1-1	对可能引起投资者理解障碍及有特定含义的名称缩写、专有名词等做出释义。		
M-2	**第二章风险提示及说明**		
M-2-1	投资风险——利率风险、流动性风险、偿付风险。 财务风险——主要是指企业资产负债结构和其他财务结构不合理、资产流动性较差、债务规模扩张较快、未来资本支出大幅增加及未来项目收益不确定、受限资产占比较高、非经常性损益占比较高、衍生产品公允价值变化较大、或有负债规模过高、重大会计科目变动幅度较大等财务因素引起的风险。		

	经营风险——主要是指企业的产品或服务的市场前景、行业经营环境的变化、产品供求及原材料价格波动、行业竞争加剧、商业周期或产品生命周期的影响、市场饱和或市场分割、过度依赖单一市场、市场占有率下降、进出口业务规模较大的企业面临汇率及贸易环境变化等风险。		
	管理风险——主要是指组织机构和管理制度不完善，与控股股东及其他重要关联方存在同业竞争及重大关联交易，公司担保金额较高，子公司较多、跨行业经营及内部股权关系复杂，发行后重要股东可能变更或资产重组，高危行业可能面临安全生产事故等导致企业管理层、管理制度、管理政策不稳定的风险。		
	政策风险——主要是指因国家法律、法规、政策可能发生变化对企业产生的具体政策性风险，如因财政、金融、土地使用、产业政策、行业管理、环境保护、税收制度、财务管理制度、经营许可制度、外汇制度、收费标准、		
	国际反倾销政策、反补贴或特殊保障措施、各国政策差异等方面发生变化而对企业的影响。		
M-2-3	特有风险——与本期债务融资工具发行相关的其他特有风险。		
M-3	**第三章发行条款**		
M-3-1	主要发行条款——债务融资工具名称，企业全称，企业待偿还债务融资余额，注册通知书文号，期限，面值，发行价格或利率确定方式，发行对象，承销方式，发行方式，发行日期，起息日期，兑付价格，兑付方式，兑付日期，信用评级机构及信用评级结果，赎回条款或回售条款（如有），增进情况。		
M-3-2	发行安排——簿记建档（招标）安排，分销安排，缴款和结算安排，登记托管安排，上市流通安排，其他。		
M-4	**第四章募集资金运用**		
M-4-1	募集资金用途——披露募集资金运用主体的名称、金额、缺口匡算；用于项目的，披露项目基本内容，投资额，自有资本金及资本金到位情况，建设计划及现状，土地、环保、立项批复情况（批复文件作为备查文件）。		

M-4-2	承诺——用于符合国家法律法规及政策要求的企业生产经营活动；在债务融资工具存续期间变更资金用途前及时披露有关信息。		
M-5	**第五章企业基本情况**		
M-5-1	基本情况——注册名称，法定代表人，注册资本，设立（工商注册）日期，工商登记号，住所及其邮政编码，电话，传真号码。		
M-5-2	历史沿革——以主要实体的承继关系为主线，披露企业设立、历史沿革、经历的改制重组及股本结构的历次变动；披露历史上改制、重大增减资、合并、分立、破产重整及更名等代表企业阶段性进程的重要事件。		
M-5-3	控股股东和实际控制人——基本情况及持股比例。实际控制人披露到最终的国有控股主体或自然人为止。		
	控股股东或实际控制人为自然人——披露其姓名、简要背景及所持有的企业股份被质押的情况，同时披露该自然人对其他企业的主要投资情况、与其他主要股东的关系。		
	企业控股股东或实际控制人为法人——披露该法人的名称、成立日期、注册资本、主要业务、资产规模、收入、利润及所持有的企业股份增减变动及被质押的情况。		
M-5-4	独立性——披露与控股股东之间在资产、人员、机构、财务、业务经营等方面的相互独立情况。		
M-5-5	重要权益投资情况——披露合并范围内子公司的持股比例，对于持股比例小于 50% 但纳入合并范围及超过 50% 但未纳入合并范围的，应当披露原因。		
	对企业影响重大的子公司——披露基本情况、主要业务范围、近一年的主要财务数据（包括资产、负债、所有者权益、收入、净利润等）及其重大增减变动的情况及原因。		
	主要参股公司及对企业有重要影响的关联方——对收入占比较高、资产占比较高等影响重大的参股企业及其他对企业有重大影响的关联方，比照子公司进行披露。		
M-5-6	治理结构——治理结构、组织机构设置及运行情况，包括各主要职能部门、业务或事业部和分公司的情况。		
	内控制度——披露内控制度的制度名称及其核心内容，包括预算管理，财务管理，重大投、融资决策，担保制度，关联交易制度，对下属子公司资产、人员、财务的内部控制等。		

M-5-7	企业人员基本情况——披露员工情况、董事、监事及高级管理人员姓名、职位及任职期限等，并对高管人员的简历进行介绍。对高管人员设置是否符合《公司法》等相关法律法规及公司章程要求进行说明。		
M-5-8	板块构成——各业务板块近三年及一期营业收入、营业成本、毛利及毛利率的数额与占比。		
	收入占近一年或近一期主营业务收入 10% 以上，或毛利润占 10% 以上的主要业务板块，披露近三年及一期盈利模式、上下游产业链情况、产销区域、关键技术工艺、行业地位等。披露能说明其行业地位和经营优势的行业关键指标数据，并说明相关数据来源。		
M-5-9	在建工程——以列表形式披露主要在建工程名称、投资金额、已投资金额、合规性。对企业生产经营影响重大的在建工程，介绍基本内容、投资额、建设计划及现状、自有资本金及资本金到位情况。		
	拟建工程——未来拟投资项目名称、投资金额、投资计划及投资进度安排。		
M-5-10	发展战略——披露未来 3-5 年的发展战略规划。		
M-5-11	行业状况——披露收入占近一年或近一期主营业务收入 10% 以上，或毛利润占 10% 以上的主要业务板块行业现状、行业前景、行业政策、竞争格局等。		
M-6	**第六章企业主要财务状况**		
M-6-1	披露近三年经审计的财务报告及近一期会计报表编制基础、重大会计政策变更、审计情况、合并报表范围变化情况。如会计师事务所变更，披露变更原因；如合并报表范围发生重大变化，披露变动原因。		
	以列表形式披露近三年及一期资产负债表、利润表及现金流量表，注明数据来源。企业编制合并财务报表的，同时披露合并和母公司财务报表。		
M-6-2	重大会计科目分析——披露近三年及一期资产负债结构表。对近一年及一期占总资产 10% 以上的资产类科目、占总负债 10% 以上的负债类科目，或者变化幅度在 30% 以上的会计科目，分析变动情况及变动原因。		
	重要财务指标分析——近三年及一期偿债能力、盈利能力、运营效率等财务指标及变动原因。		

M-6-3	有息债务——近一年期末有息债务的余额、期限结构、担保结构及主要债务起息日、到期日及融资利率情况。存续期的直接债务融资发行情况（包括发行人及所在集团公司并表范围内企业的发行情况）。		
M-6-4	关联交易——发行人涉及关联交易的，参照表 M.3。		
M-6-5	或有事项——披露近一期对外担保、未决诉讼（仲裁）、重大承诺及其他或有事项。		
M-6-6	受限资产情况——披露近一期的资产抵押、质押、留置和其他限制用途安排，以及除此以外的其他具有可对抗第三人的优先偿付负债的情况。披露内容包括但不限于：资产名称、抵押 / 质权人、资产账面价值、期限等。		
M-6-7	衍生产品情况——至近一期持有的衍生产品名称、交易目的、交易结构、名义本金、盈亏情况。		
M-6-8	重大投资理财产品——至近一期持有的重大投资理财产品名称、交易目的、交易结构、名义本金、盈亏情况。		
M-6-9	海外投资——至近一期的海外投资内容、投资金额、投资计划、现状及相关经营数据。		
M-6-10	直接债务融资计划——披露直接债务融资金额、进度、发行计划等。		
M-7	**第七章企业资信状况**		
M-7-1	评级——披露近三年债务融资的历史主体评级、评级机构、评级结论及标识所代表的涵义。		
M-7-2	授信情况——近一期主要贷款银行授信额度、已使用额度及未使用额度。		
M-7-3	违约记录——近三年及一期债务违约的金额、时间、原因及处置进度。		
M-7-4	发行及偿付直接债务融资工具的历史情况。		
M-8	**第八章债务融资工具信用增进**		
M-8-1	债务融资工具有信用增进的，参照表 M.5。		
M-9	第九章税项		
M-9-1	投资债务融资工具所缴纳的税项——税项、征税依据及缴纳方式。		
M-9-2	声明——所列税项不构成对投资者的纳税建议和纳税依据。		
M-10	第十章信息披露安排		

M-10-1	信息披露安排——信息披露的依据、披露时间、披露内容、重大事项信息披露、存续期内定期信息披露、本息兑付事项。披露时间不晚于企业在证券交易所、指定媒体或其他场合向市场公开披露的时间。		
M-11	**第十一章投资者保护机制**		
M-11-1	违约事件		
M-11-2	违约责任		
M-11-3	投资者保护机制		
M-11-4	不可抗力		
M-11-5	弃权		
M-12	**第十二章发行有关机构**		
M-12-1	披露下列机构的名称、住所、法定代表人、联系电话、传真和有关经办人员的姓名：		
	——企业		
	——主承销商及其他承销机构		
	——律师事务所（如有）		
	——会计师事务所（近三年出具审计报告的会计师事务所）		
	——信用评级机构（如有）		
	——信用增进机构（如有）		
	——登记、托管、结算机构		
	——其他与发行有关机构		
	企业与相关机构的关系——披露企业与发行有关的中介机构及其负责人、高级管理人员、经办人员之间存在的直接或间接的股权关系及其他重大利害关系；若无上述关系，企业应做相关说明。		
M-13	**第十三章备查文件**		
M-13-1	备查文件——注册通知书、公开披露文件、募投项目相关批复文件等。		
M-13-2	查询地址——企业、主承销商。		
M-13-3	网站——交易商协会认可的网站。		
备注			

M.1 表（涉及安全生产的信息披露表）

序 号	信息披露要点	页 码	备 注
M.1–1	第二章风险提示及说明 在 M–2–2 中披露安全生产方面可能引起的风险，已发生的重大安全生产事故应披露事故情况。		
M.1–2	第五章企业基本情况		
	在 M–5–6 中披露安全生产方面内控制度及相关应急预案。		
	在 M–5–8 中披露安全生产管理方面具体措施及实施情况。		
	在 M–5–8 披露近三年及一期的安全生产检查记录；发生安全生产事故的，披露安全生产事故基本情况、国家相关部门对事故原因及性质的认定、发行人对相关整改要求的落实以及后续检查验收情况等。		
备注			

M.2 表（涉及非标准无保留意见审计报告的信息披露表）

序 号	扉页	页 码	备 注
M.2–1	在 M–0–1 中提示：“xxx 会计师事务所对本企业 xxxx 年财务报告出具了 xxxx（审计报告类型）的审计报告，请投资者注意阅读该审计报告全文及相关财务报表附注。本企业对相关事项已作详细说明，请投资者注意阅读。”		
M.2–2	第六章企业主要财务状况		
	在 M–6–1 提示审计报告类型为非标准无保留意见审计报告，		
	披露对公司的影响程度、消除该事项及其影响的具体措施、		
	目前的实施情况及后续措施安排。		
M.2–3	第十四章附录		
	会计师事务所、发行人分别对非标准无保留意见审计报告涉及事项出具专项说明。内容包括但不限于出具该意见的依据及对发行人的影响程度。		

M.3 表（涉及关联交易的信息披露表）

序 号	信息披露要点	页 码	备 注
M.3–1	第二章风险提示及说明		
	在 M–2–2 中披露关联交易风险。		
M.3–2	第五章企业基本情况		
	在 M–5–6 中披露关联交易制度的内容，包括但不限于定价原则、决策程序及决策机制。		
M.3–3	第六章企业主要财务状况		
	在 M–6–2 中进一步披露应收应付账款、其他应收应付款以及其他与经营活动有关的现金流等科目的内容及变动情况。 在 M–6–4 中披露近一年关联交易情况、产生原因、定价依据、结算方式、交易影响、关联资金占用情况等。		
备注			

M.4 表（涉及重大资产重组的信息披露表）

序 号	信息披露要点	页 码	备 注
M.4–1	第二章风险提示及说明		
	在 M–2–2 中披露重大资产重组可能引起的相关风险。		
M.4–2	第五章企业基本情况		
	在 M–5–2 中披露资产重组方案、所处的阶段及已履行的法律程序、重组过程的合规性、对发行债务融资工具的主体资格及其决议有效性的影响。		
M.4–3	第六章企业主要财务状况		
	在 M–6–1 中披露近三年及一期可比财务数据。		
	在 M–6–2 中分析重组对企业生产经营和偿债能力的影响。		
备注			

M.5 表（涉及信用增进的信息披露表）

序 号	信息披露要点	页 码	备 注
M.5–1	**第二章风险提示及说明**		
	在 M–2–3 中披露特有风险——与本期债务融资工具信用增进相关的特有风险。		
M.5–2	**第八章债务融资工具信用增进**		
	在 M–8–1 中披露相关机构情况——由专业信用增进机构提供信用增进的，按照《中国银行间市场信用增进业务自律管理规则》要求披露信息；由其他企业提供的，比照发行人进行信息披露。		
	在 M–8–1 中披露担保函或担保协议内容——包括：担保金额，担保期限，担保方式，担保范围，企业、担保人、债务融资工具持有人之间的权利义务关系，各方认为需要约定的其他事项。		
	在 M–8–1 中披露担保物的名称、金额（账面值和评估值）、金额与所发行债务融资工具面值总额和本息总额之间的比例；担保物的评估、登记、保管和相关法律手续的办理情况（如有）。		
	在 M–8–1 中披露保证人的资信或担保物发生重大变化时的持续披露安排。		
M.5–3	**第十三章备查文件**		
	在 M–13–1 披露相关证明文件（如有）作为备查——采用抵（质）押担保的，提供抵（质）押物的权属证明、资产评估报告及与抵（质）押相关的登记、保管、持续监督安排等方面的文件。		
备注			

II. 非公开定向发行表格体系

i. 使用说明

1.《非公开定向发行债务融资工具注册文件表格体系》（以下简称《表格体系》）包括注册文件清单和信息要素表格两部分，具体如下：

（1）注册文件清单列示企业注册发行非公开定向债务融资工具应向交易商协会提交的书面材料。

（2）信息要素表格列示的内容是对注册文件的最低信息要素要求，包括 DX 表（非公开定向发行协议表）、DX.Z（涉及信用增进的定向发行协议要素表）、DQ（定向工具投资人确认函）、DF 表（定向工具法律意见书表）。

（3）DX 表附件五在当期发行时由发行人填写并盖章确认，并于当期发行后向交易商协会报备。律师应对 DX 表附件五所述内容发表法律意见，且一并于发行后随同附件五向交易商协会报备。

2. 企业、提供专业服务的中介机构及其经办人员应按有关法律法规、规范性文件和自律规则指引要求，顺序编写注册文件、发表专业意见，并对所出具的注册文件和意见承担相应法律责任。

（1）会计师事务所应依据相关规定对企业进行审计，并出具审计报告。

（2）律师事务所应在充分尽职调查的基础上，在法律意见书中对相关事项发表明确意见。

（3）主承销商应按本公告要求，填报注册文件清单及信息要素表格。

（4）主承销商应按以下要求填写表格：

a. 注册文件清单：应在注册文件清单表首位置，填写发行企业名称和品种；如“文件种类”对应的文件齐备，则在该文件所对应的“选项”列下画“√”。

b. 页码：应将披露内容所在文件的具体页码范围填写在“页码”项下。

c. 备注：对于某些确实不适用的信息要素内容，或需要说明的特殊事项，应根据实际情况，在对应的“备注”项下进行说明。

d. 主承销商有关责任人签章：在确认注册文件清单、信息要素表格填写完整且相应文件全部齐备的情况下，主承销商相关业务部门负责人、团队负责人、经办人员应分别在“主承销商有关责任人签章”处签名或加盖人名章。

e. 主承销商签章：注册文件清单中主承销商签章位置，应加盖主承销商相关业务部门公章。注册文件清单及信息要素表格应加盖主承销商相关业务部门骑缝章。

ii. 注册文件清单

（XX 企业 XX 品种注册文件）

序 号	文件种类	选 项	备 注
DY-1	注册报告	□	
	——附营业执照	□	
	——附《公司章程》及与其一致的有权机构决议	□	
	——附涉密企业的脱密说明（如有）	□	
DY-2	推荐函	□	
DY-3	非公开定向发行协议	□	
	——附投资风险提示	□	
	——附发行人基本情况	□	
	——附投资人名单及基本情况	□	
	——附信用增进机构基本情况（如有）	□	
	——非公开定向债务融资工具发行条款与条件	□	
DY-4	定向工具投资人确认函	□	
DY-5	近一年经审计的财务报告及母公司（如有）会计报表	□	
DY-6	信用增进函（如有）	□	
	——附有权机构决议及有关内控制度（如有）	□	
	——信用增进机构近一年经审计的财务报告及母公司会		
	计报表（如有）	□	
DY-7	法律意见书	□	
DY-8	承销协议	□	
DY-9	其他（如有）	□	
备注			
主承销商有关责任人签章主承销商签章			
协会接收人　　年　　月日			

说明：

1. 注册报告应按客户端“填写说明”填写，填写的基本信息应与定向协议等保持一致。

2. 推荐函中规则引用应准确，并声明募集资金用途合法合规；推荐函中信息应与注册报告、定向协议等相关信息保持一致。

3. 审计报告应包含会计师事务所和至少两名注册会计师签章；财务报表应加盖公司公章，并由法定代表人、主管会计工作的公司负责人、公司会计机构负责人（会计主管人员）签名或盖章；非标准审计报告需由发行人及会计师事务所出具专项说明。

4. 如果使用了《非公开定向发行协议（参考文本）》，请在备注中说明。

iii. 信息要素表格

1.DX 表（非公开定向发行协议要素表）

序 号	信息要素	页 码	备 注
DX-0	目录、扉页		
DX-0-1	目录标明各章、节的标题及相应的页码。		
DX-0-2	协议签订时间、签订方式及联系方式。		
DX-0-3	发行人是依法设立并有效存续的非金融企业法人，拟采用非公开定向发行方式发行债务融资工具。		
	发行人已聘请 ×× 担任主承销商，聘请 ×× 担任联席主承销商（如有），聘请 ×× 担任簿记管理人（如有）。		
	投资人具有投资定向工具的实力和意愿，完全了解发行人定向发行的债务融资工具的性质及认购或受让所面临的相关风险，自愿接受交易商协会自律管理。		
	经友好协商，本协议各方本着诚实守信、平等互利、表意真实的原则，就定向工具发行及申购的有关事宜达成如下协议。		
DX-1	**第一条 定向工具的发行与认购**		
DX-1-1	明确注册金额。		
DX-1-2	发行人将在每次发行前确定定向工具名称、发行金额、期限、发行价格或利率确定方式等发行条款和条件，并告知定向投资人。		
DX-1-3	投资人愿意参与发行人在前述注册额度内的任意一期的定向工具发行，并有权根据当期定向工具的发行条款和条件决定是否提交认购申请。		
DX-2	**第二条募集资金用途**		
DX-2-1	承诺——发行人承诺定向工具募集资金用途符合法律法规和国家政策要求，并按约定用途使用。发行前将向定向投资人披露募集资金的具体用途。		
DX-2-2	如果在当期定向工具存续期间，募集资金用途发生变更，变更后的募集资金用途应符合法律法规和国家政策要求，且发行人应在募集资金变更前取得投资人的同意。约定变更募集资金用途应履行的程序。		
DX-2-3	募集资金用途或在附件五中于当期发行时再披露。		
DX-3	**第三条信息披露**		
DX-3-1	信息披露方式——约定信息披露方式。		

DX-3-2	发行情况的披露——发行人在当期定向工具完成债权债务登记的次一工作日，向投资人披露当期定向工具实际发行规模、期限、利率等相关信息。		
DX-3-3	存续期内定期信息披露——约定在本期定向工具存续期，发行人财务报告等定期信息披露安排。		
DX-3-4	重大事项披露——约定重大事项的标准、披露方式、披露时间等。		
DX-3-5	付息兑付披露——发行人于定向工具本息兑付日前 5 个工作日披露本金兑付及付息事项。		
X-4	**第四条投资人保护**		
DX-4-1	违约定义。在定向工具存续期间，出现约定情形时，投资人有权召集定向工具持有人会议或采取其他约定措施。持有人会议的召集、召开、表决程序和决议，可按交易商协会相关自律规范文件的规定执行。		
DX-4-2	对持有人会议的决议有效性及执行或约定的保护措施发生争议的，按协议约定解决。		
DX-4-3	设置违约应对机制，比如由主承销商代理投资人开展相关违约的司法程序。		
DX-5	**第五条 发行人的权利与义务**		
DX-5-1	权利——依法享有按照约定方式使用定向工具募集资金的权利。		
DX-5-2	义务——按本协议约定，以诚实信用、勤勉尽责的原则管理和使用募集资金；发行人拟改变募集资金用途的，将依据本协议约定履行必要的程序；		
	按照约定向持有定向工具的投资人还本付息和履行本协议约定的其他义务；		
	接受投资人的监督，并在出现本协议约定的违约事件时，按照约定提供补偿措施。 按照交易商协会的自律管理规则要求和本协议之约定，真实、准确、完整、及时、公平地履行信息披露义务，不得有虚假记载、		
	误导性陈述或重大遗漏。		
DX-6	**第六条投资人的权利与义务**		

DX-6-1	权利——有权决定是否转让其认购的定向工具；发现发行人发生利益可能受到损害事项时，将依据法律、法规的规定或本协议的约定及时行使定向工具投资人的权利。		
DX-6-2	义务——投资人具备购买定向工具的资格和资质；		
	投资人已经取得了参与定向工具发行的全部授权和批准；		
	投资人无条件同意发行人在本协议签署后继续安排其他符合定向投资人资格的机构签署本协议，赋予其认购定向工具的权利；		
	交易商协会对定向投资人的自律管理；		
	地址、传真号码等信息发生变更应及时通知发行人和主承销商。		
DX-7	**第七条保密义务**		
DX-7-1	约定发行人、投资人的保密义务、保密条款及适用条件。		
DX-8	**第八条变更**		
DX-8-1	协议签订方协商一致，可有效修改协议约定。约定协议变更程序。		
DX-9	**第九条定向工具发行的终止**		
DX-9-1	约定发行终止情形及签订方的权利。		
DX-10	**第十条信用增进的安排（如有）**		
DX-11	**第十一条争议的解决**		
DX-11-1	本协议受中华人民共和国（为本协议之目的，不包括香港特别行政区、澳门特别行政区和台湾地区）法律（不包括冲突法规则）管辖，并按其解释。		
DX-11-2	约定争议解决方式。		
DX-11-3	针对本协议任何争议条款所进行的争议解决方式不影响本协议其他条款的效力和继续履行。		
DX-12	**第十二条协议的生效与终止**		
DX-12-1	各方已采取一切必要的内部行为，使其获得授权签订并履行本协议，其在本协议上签字的代表已获正当授权签署本协议，并使各方受本协议约束。本协议需经各方法定代表人或授权代理人签字并加盖公章或合同专用章。		
	本协议项下的定向工具已在中国银行间市场交易商协会注册。		

DX–12–2	本协议到期日以各方在本协议项下的全部权利义务关系终止为准。		
DX–12–3	本协议未尽事项应另行订立书面补充协议，补充协议与本协议不一致的，补充协议有优先效力。		
DX–12–4	本协议附件构成协议不可分割之一部分。		
DX–12–5	约定协议签署份数。		
DX– 附 1	**附件一：投资风险提示**		
DX– 附 1.1	与定向工具发行相关的风险、与发行人相关的风险。		
DX– 附 2	**附件二：发行人基本情况**		
DX– 附 2.1	发行人基本情况、符合国家法律法规及相关政策要求的相关情况、评级约定（应协商确定是否评级及评级安排）、发行人直接债务融资情况及相关融资计划、发行人需要说明的其他事项。		
DX– 附 3	**附件三：定向工具投资人名单及基本情况**		
DX– 附 3.1	公司名称、法定代表人（或合法授权代表）、地址、联系电话、传真电话、联系人、电子邮箱、邮政编码。		
DX– 附 4	**附件四：信用增进机构基本情况（如有）**		
DX– 附 4.1	信用增进机构基本情况、需要说明的其他事项。		
DX– 附 5	**附件五：非公开定向债务融资工具发行条款与条件**		
DX– 附 5.1	本期定向工具为实名记账式债券，其托管、兑付与交易须按照交易商协会有关自律规则及银行间市场清算所股份有限公司、中国外汇交易中心暨全国银行间同业拆借中心的有关规定执行。本期定向工具的交易流通及其他处置方式仅限定向投资人之间，不得向其他机构或个人出售定向工具。本期定向工具的发行由主承销商负责组织协调。		
DX– 附 5.2	发行人名称、定向工具名称、注册额度、注册通知书文号、本期发行金额、期限、面值、发行价格或利率确定方式、发行对象及流通范围、承销方式、发行方式、兑付价格、兑付方式、信用评级及跟踪评级安排（如有）、本期定向工具信用增进（如有）、发行安排等。		
DX– 附 5.3	募集资金用途。募集资金用途应符合法律法规和国家政策要求。		
DX– 附 5.4	发行人签章及日期。		

2.DX.Z 表（涉及信用增进的定向发行协议要素表）

序 号	信息要素	页 码	备 注
DX.Z–1	第十条 信用增进的安排		
	在 DX–10 中披露信用增进函内容。		
DX.Z–2	附件一 风险提示及说明		
	在 DX 附 1 中披露特有风险——与本期定向工具信用增进相关的特有风险。		
DX.Z–3	附件四 信用增进机构基本情况		
	在 DX– 附 4 中披露信用增进机构情况及其信息披露安排——由专业信用增进机构提供信用增进的，按照《中国银行间市场信用增进业务自律管理规则》要求披露信息；由其他企业提供的，比照发行人进行信息披露。		
DX.Z–4	区域集优模式（如有）		
	第五条 发行人的权利和义务		
	在 DX–5 中披露任一联合发行人在其发行额度内各自承担还本付息义务，其参加本期区域集优定向集合票据的发行并不构成对其他发行人还本付息义务的承担、承诺或担保。		
	第十条 定向工具信用增进		
	在 DX–10 中披露区域集优模式的基本情况。		
备注			

3.DQ 表（定向工具投资人确认函）

定向工具投资人确认函

（示范样本）

中国银行间市场交易商协会：

我机构确认如下事项：

I. 我机构自愿投资 _____（发行人名称）拟发行的

_____（本期定向工具全称）。

II. 我机构了解该期定向工具的投资风险，有能力并愿意承担该期非公开定向工具的投资风险。

III. 我机构自愿接受中国银行间市场交易商协会自律管理，履行会员义务。

特此函告。

_____（投资人机构名称）

签章：

_____ 年 _____ 月日

4.DF 表（法律意见书信息要素表）

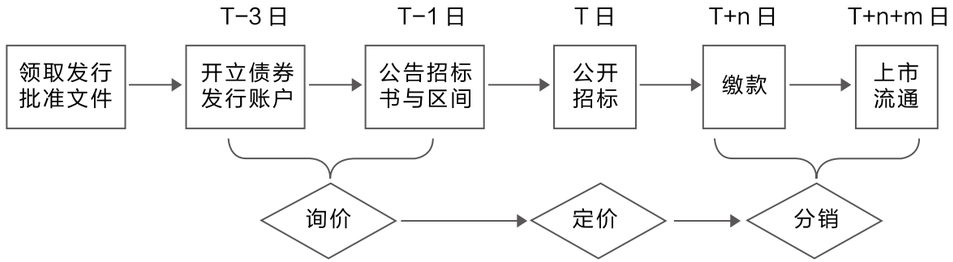
序 号	信息要素	页 码	备 注
DF-0	**应声明的事项**		
DF-0-1	依据《中华人民共和国公司法》、《非金融企业债务融资工具管理办法》（人民银行令 [2008] 第 1 号）等法律法规和规范 性文件，按照交易商协会规则指引以及律师行业公认的业务标准、道德规范和勤勉尽责精神出具法律意见书。		
DF-0-2	承诺已依据本法律意见书出具日以前已发生或存在的事实和我国现行法律、法规和规则指引发表法律意见；已严格履行法定职责，遵循勤勉尽责和诚实信用原则，对定向工具注册发行的合法合规性进行了充分的尽职调查，保证法律意见书不存在虚假记载、误导性陈述及重大遗漏。		
DF-0-3	同意将法律意见书作为定向工具注册必备的法律文件，随同其他材料一同报送，并承担相应的法律责任。		
DF-0-4	可作出其他适当声明，但不得做出违反律师行业公认的业务标准、道德规范和勤勉尽责精神的免责声明。		
DF-1	**一、发行主体**		
DF-1-1	是否具有法人资格。		
DF-1-2	是否为非金融企业。		
DF-1-3	是否为交易商协会会员。		
DF-1-4	历史沿革是否合法合规。		
DF-1-5	是否依法有效存续，即根据法律、法规、规范性文件及公司章程，发行人是否有应当终止的情形出现。		
DF-2	**二、发行程序**		
DF-2-1	内部决议——有权机构是否已依法定程序作出发行债务融资工具的决议，决议的内容与程序是否合法合规。如决议机构是经过授权取得决议权的，律师应对授权范围、程序是否合法合规做出认定。		
DF-3	**三、发行文件及发行有关机构**		
DF-3-1	定向协议——定向协议是否合法有效。		
DF-3-2	法律意见书——出具法律意见书的律师事务所及律师是否具备相关资质，是否与发行人存在关联关系。		

DF-3-3	审计报告——出具审计报告的会计师事务所及经办注册会计师是否具备相关资质，是否与发行人存在关联关系。		
DF-3-4	主承销商是否具备相关资质，是否与发行人存在关联关系。		
DF-3-5	评级报告（如有）——出具评级报告的评级机构是否具备相关资质，是否与发行人存在关联关系。		
DF-4	**四、与本次发行有关的重大法律事项及潜在法律风险**		
DF-4-1	业务运营情况——经营范围、业务是否合法合规、符合国家相关政策；近三年内是否因安全生产、环境保护、产品质量、纳税等受到重大处罚。融资行为是否因上述业务运营情况或其他原因受到限制。核查主体范围包括发行人及其合并范围内子公司。		
DF-4-2	信用增进情况（如有）——说明信用增进机构资质、信用增进决议是否合法有效；信用增进协议或信用增进函是否合法有效，债务融资工具是否据此获得合法的信用增进。		
DF-4-3	需要说明的其他问题——本表格未明确要求，但与注册发行有关的重大法律事项及潜在法律风险，律师应当发表法律意见。因注册文件名称不一致、注册文件的签署时间滞后等可能影响文件的法定效力的情况，应由律师应对其形成原因及文件的合法合规性发表意见。		
DF-5	**五、总体结论性意见**		
DF-5-1	律师应对发行人注册发行定向工具是否合法合规、是否符合规则指引、是否存在潜在法律风险明确发表总体结论性意见。		
DF-6	至少由二名经办律师签章，并由该律师事务所加盖公章、签署日期。		
备注			

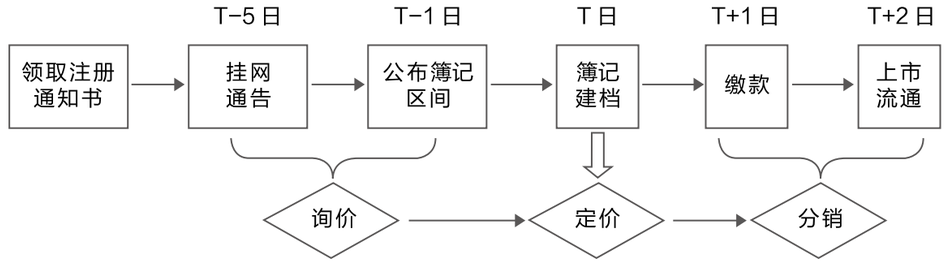
3. 簿记建档的一般流程

1.1 发行流程图

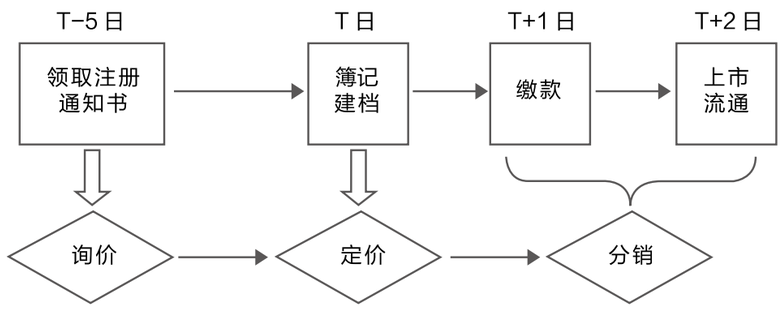
3.1.1 公开招标发行流程图



1.1.2 簿记建档发行流程图



1.1.2 簿记建档发行流程图



1.2 公开招标发行操作规程

1.2.1 签署服务协议

发行人应与投标参与人签订一对一的书面协议，以规范、明确双方招投标的权利义务关系。

1.2.2 发行材料报送

发行人向人民银行金融市场司提出招标发行的申请，并提交以下材料：主管部门批准本期债券发行的文件、本期债券的发行办法和招标书、投标参与人的名单及其与发行人签订的招投标书面协议、准备公开披露的文件目录。

1.2.3 材料审核及反馈

金融市场司将对发行人提交的招标发行申请进行审核，对于符合招标发行条件的，应在两个工作日内通知中央结算公司做好该期债券的发行准备工作；中央结算公司应对各类发行人的债券招标发行时间做好统筹安排并及时告知发行人

1.2.4 招标信息披露

在招标发行前，发行人除应按照相关规定向投资者履行信息披露义务外，还应至少提前一个工作日通过中国债券信息网（www.chinabond.com.cn）公开披露以下信息：本期债券的发行办法和招标书及投标参与人名单。

1.2.5 公布招标结果

在招标发行结束后，发行人应在一个工作日内通过中国债券信息网公布当期各只债券的招标结果，招标结果应包括实际投标量、投标家数、中标家数和中标利率。而中央结算公司应在招标结束后向中国人民银行金融市场司提供当期各只债券的招投标情况，包括招标结果和投标中标明细。

1.3 簿记建档发行操作规程

1.3.1 签署服务协议并开立托管账户

发行人首次委托上海清算所提供相关业务服务，应首先在上海清算所开立债券发行账户。

1.3.2 发行时间安排

发行人在注册有效期内可分期发行债务融资工具，首期发行应在注册后 2 个月内完成，两个月内未完成首次发行，应当向交易商协会进行备案。发行人在规定的时间内，应综合考虑自身的融资需求，债券市场行情等因素选择对自身最有利的发行时间。由于首期发行债务融资工具的，应至少于发行日前 5 个工作日公布发行文件，后续发行的，应至少于发行日前 3 个工作日公布发行文件。采用簿记建档方式发行的，需要至少在发行公告日前三个工作日确定和报备发行方案。公告期结束后，承销团成员进行债券的分销，需要 1–2 个工作日，所以在确定最佳的发行时间时，首次发行的发行人一般需预留出 6–7 个工作日的公告分销期，后续发行的，一般预留出 4–5 个工作日的公告分销期。

1.3.3 报备发行方案流程

发行人及主承销商应制定《发行方案》，至少于公告发行文件前三个工作日向交易商协会备案，并将其作为发行文件的一部分向市场披露。

1.3.4 发行披露文件

企业应通过银行间市场制定信息披露平台公布当期发行文件。企业发行中期票据除应按交易商协会《银行间债券市场非金融企业债务融资工具信息披露规则》在银行间债券市场披露信息外，还应于中期票据首次发行公告之日，在银行间债券市场一次性披露中期票据完整的发行计划。

1.3.5 询价与簿记建档流程

（1）确定利率区间

发行材料公告后，发行人和主承销商结合发行主体资质情况，综合参考市场利率、询价情况确定发行利率区间，并签署簿记建档利率（价格）区间确认书。

（2）公告并发送申购要约

发行前一日，主承销商应当向承销团成员发送申购说明，并将申购说明向市场进行公告。申购说明的主要内容包括申购本期债券的重要提示、本期债券的主要条款、本期债券的申购利率区间、申购时间、申购程序、本期债券的配售与缴款、簿记管理人的联系方式和指定缴款账户等信息。

1.3.6 配售与缴款流程

簿记建档发行，认购人须在约定时间向簿记管理人提交加盖公章的书面申购要约，在规定时间以外所作的任何形式认购承诺视为无效。簿记管理人于发行日约定时间向获得配售的承销商发出“缴款通知书”，通知获配承销商本期债务融资工具配售数量及通过簿记建档确定的发行利率。

1.3.7 分销与上市交易流程

簿记管理人根据债务融资工具分销需要设定分销期，安排承销团成员进行协议分销。分销期自簿记建档日至缴款截止日止。承销团成员对承销团以外机构的所有配售应以协议分销的形式在此期间完成。缴款完成的次一工作日，该债券即可在银行间市场流通交易。

1.4 非公开定向发行操作规程

1.4.1 签署定向发行协议与投资者确认函流程

簿记管理人在询价阶段与有投资意向的潜在投资人签署定向工具发行协议和投资者确认函，明确双方的权利与义务。签署了上述文件的投资人在定向工具发行时才能购买并参与上市后的交易流通。

1.4.2 发行启动流程

簿记管理人根据债券市场走势和该期定向工具的询价情况，灵活确定发行时间窗口，与公开发行不同之处在于发行定向工具不用公开挂网。发行前一日，簿记管理人向签署了定向发行协议和投资者确认函的投资者发送申购说明，申购说明的主要内容包括申购本期债券的重要提示、本期债券的主要条款、本期债券的申购利率区间、申购时间、申购程序、本期债券的配售与缴款、簿记管理人的联系方式和指定缴款账户等信息。

1.4.3 簿记建档、缴款与分销

定向工具的簿记建档、缴款与分销流程与公开发行的债务融资工具一样，簿记管理人定向发行不得采用公开劝诱和变相公开方式。定向发行相关当事人及其工作人员在定向发行工作中不得有实施或配合实施不正当利益输送行为。

I. Introduction

In the 2014 UK-China Economic and Financial Dialogue, Vice-Premier Ma Kai and Chancellor of the Exchequer George Osborne agreed that further cooperation between UK and Chinese financial market participants would benefit the development of capital markets, and welcomed the creation of a private sector working group chaired by the International Capital Market Association **(ICMA)** and the National Association of Financial Market Institutional Investors of China **(NAFMII)**.

The working group has brought together experts from financial institutions in China and London to share expertise on processes, practices, and the associated market infrastructure. Both ICMA and NAFMII acknowledge the important contributions of other financial institutions in the drafting and review of this report.

This first report by the working group is intended to give policymakers and market practitioners a useful outline of the way in which bonds are sold through the primary capital markets in both the cross-border international debt market and the onshore Chinese interbank bond market.

The analysis in this report covers bond issuances in two significant market segments:

- the international investment grade public markets (with their prevailing European-style bookbuilt syndications except where otherwise stated); and
- the Chinese onshore interbank market, which is China's over-the-counter market, and accounts for more than 90% of the total onshore market by new issuance and trading volume. This report does not attempt to cover the full range of bonds and other debt securities issued in markets across the globe. In particular, this report does not cover purely local bond markets, and does not cover international bonds issued to investors in the United States.

This report and its contents do not constitute an official or definitive statement on current regulation or market practices. This report is based on feedback from various market practitioners obtained with the assistance of several ICMA and NAFMII members.

The ICMA-NAFMII working group will continue to explore ways in which common market practices can help to make the debt markets more efficient, resilient, and well-governed. ICMA and NAFMII welcome further input to inform its continued work and improve practices internationally.

II. Executive Summary

The debt capital markets have long played a role in providing stable financing in the public and private sectors. At a time when banks are restricting lending, they enable companies to access funding and to deliver efficient returns to investors. Transferable debt securities are one of a range of means, alongside equity share capital, bank lending, and other methods, by which companies fund their business needs and their expansion. The bond markets are also important to governments to maintain sustainable and balanced growth, fund infrastructure projects, and respond to climate change.

International bond offerings must take into account various statutes, regulations, and court rulings from the European Union, United States and other jurisdictions that may relate to the issuer, underwriters, eventual investors, and any exchange/ listing venues. At the same time, over the last few decades a significant body of market practice has evolved to enable more efficient transactions. The Chinese interbank bond market, which has developed more quickly and recently, is governed by more detailed rules; however these rules continue to evolve, taking into account the local characteristics of the Chinese capital markets while influenced and informed by practices in other global markets.

This report is focused on processes and practices in the debt primary markets – i.e., the market in which bonds are initially offered to investors before they begin to trade freely among investors and dealers in the secondary market.

The analysis covers three important aspects of the way bonds are issued in the international and Chinese bond markets: due diligence, disclosure, and book building.

Due diligence

Due diligence is the process of identifying, processing and validating information about the issuer provided to investors to make informed investment decision.

In Chinese and international bond markets, due diligence is an essential part of the offering process. Due diligence, in practice, is a survey of the issuer to ensure the accuracy and completeness of disclosure to investors. Due diligence can cover all topics relevant to a decision to invest in the issuer's bonds, including the issuer's legal and financial status, business operations, management, and strategy.

In terms of market practice, there are no major differences in terms of the subject matter covered by due diligence in the international and Chinese capital markets. In both markets, due diligence is fundamentally a process designed to give investors all information needed to make an informed investment decision. In the international market, due diligence is also an important tool to avoid issuers' and lead managers' potential reputational damage and civil liability for any resulting losses to investors, while the Chinese system has until recently been based more on principles of investor protection and symmetric information. One notable difference in practice is that ongoing due diligence is explicitly required in China, while in the international market the due diligence effectively ends when investors receive the bonds in the primary market.

Disclosure

The international and onshore Chinese bond markets both operate under "disclosure-based" principles which place importance on transparency and information to enable investors to make informed investment decisions.

Disclosure in the prospectus mirrors to a large extent information gathered in the due diligence process, but will also usually contain a separate section on risk factors, as well as details about the particular terms and conditions of the bond and relevant offer terms.

International issuances generally require more detailed disclosure of the terms and conditions of the bond and the rights of investors than Chinese issuances, while Chinese issuances require more detailed disclosure of the use of proceeds. Some other specific aspects of disclosure, such as disclosure relating to controlling entities, related parties, work safety, and state secrets, are somewhat different between the international and Chinese markets due to broader principles of Chinese/ PRC national policy.

Also, the Chinese and international markets differ somewhat in terms of the specific representations and warranties required from each party with respect to the accuracy and completeness of the prospectus, as well as the potential respective levels of liability.

Book building

In a bond offering, "book building" is the process by which an underwriter seeks to gather demand from investors and conduct price discovery.

Generally, primary debt issuance in the international market features a shorter book building process than in China and fewer restrictions on the flow of information, subject to the general legal framework on insider information.

In the Chinese market, issuers are not involved in the core book building procedure, whereas in international markets, the issuer may be much more involved in the ongoing allocation and pricing discussions with the bookrunners.

Another major difference is that in the Chinese market, the book building process is more akin to a mechanical auction process, whereas in the international market the allocation and pricing depends more on the subtle conditions of the market and the professional experience and judgment of syndicate managers.

Recommendations

The key recommendations resulting from the comparative analysis of primary market practices are:

- Drawing on international law and market practice, consider the adoption of different levels of required disclosure in the Chinese market to take into account different types of investors (institutional and retail) and different types of issuers (seasoned and infrequent).
- Promote further development of due diligence procedures in the Chinese market, in particular drawing upon the specific areas of expertise of the various parties involved in the bond offering process.
- Further optimise and streamline the book building process in China, while also considering ways to enhance transparency in the international book building process based on current practices and lessons learned in the Chinese market.

III. Overview of international offshore and Chinese onshore markets

Types of bond offerings

By way of background, offerings of debt securities may be public or private, involving a single bank or syndicated among several banks, auctioned or underwritten (on a bookbuilt or retention basis) and done off a multi-issuance platform (such as an MTN programme) or on a standalone basis. Offerings may also be categorised according to size (including whether benchmark or not), issuer and/or investor geographical location (including domestic, foreign, international and also emerging market), bond structure (vanilla, asset-backed, covered) and term (commercial paper, note, bond) and issuer credit status (investment grade, high yield). Individual permutations of the above may involve differing laws, regulations, infrastructures and market practices.

Applicable law

In the international markets, a number of national and regional laws may be relevant to a single transaction depending, among other factors, on the domicile of the issuer and the distribution of the bonds. For example, issuers into Europe may have to comply with European Union disclosure requirements and regulations designed to prevent market abuse. Underwriters and other parties will have to pay attention to insider trading cases under the common law of England and local jurisdictions. Securities exchanges may have additional requirements for listed bonds. Finally, the contracts of international bond offerings (other than those issued into the United States) will generally be governed by English law or another established common law such as Hong Kong law or Singapore law.

International bond offerings will have to take into account United States securities laws, either to allow distribution into the United States or to ensure an exemption from U.S. registration requirements. In particular, Regulation S is a safe harbour from U.S. registration requirements for offers and sales of securities made outside the United States and/or to non-U.S. persons; Rule 144A is an exemption from U.S. registration requirements for offers and sales of securities to qualified institutional buyers.

The bond markets in China are younger than the international bond markets and have developed more quickly. The rules governing Chinese bond issuance are generally more detailed compared to the international markets, which are more driven by convention and established good practices.

In China, the onshore bond market is governed by a combination of civil law and socialist law. The most important law for issuers is the Company Law, promulgated by the State Council, which governs the establishment and operation of Chinese corporations generally. In the interbank bond market, NAFMII has authority to issue more detailed rules on issuance procedure, allocation, and disclosure.

Parties

Every bond issuance features a core set of parties involved, though sometimes the same entity may take on more than one role. The key parties involved in international and Chinese offerings are as follows:

- **Issuer:** The entity that raises capital by issuing bonds. An issuer in the international and Chinese markets may be a financial institution, a non-financial corporate, or a government entity.
- **Guarantor**: Though not present in every transaction, many bond offerings include a guarantor to enhance the credit of the bond. A guarantor may be an affiliate of the issuer, or may also be a third party, such as a development bank, with a mandate to provide credit support for certain types of bonds. Because the guarantor will usually have obligations similar to that of the issuer under a bond offering, many aspects of the transaction relevant to an issuer (such as description in an offering circular, warranties and provision of auditors' comfort letters) will apply equally to a guarantor.
- **Lead manager**: A bank mandated by the issuer to carry out the transaction. In both the international and Chinese markets (with the exception of retention or privately placed deals), the lead manager will also be a "bookrunner", that is, a bank which arranges the allocation of the bonds to investors. In the international market, several joint lead managers and joint bookrunners are appointed for any given large public transaction and comprise what is known as the syndicate. In China, usually one or two lead managers are appointed for each bond transaction with the exception of Short Commercial Papers which involves several

joint lead managers. Only one lead manager for each transaction is taking a leading role and acting as bookrunner.

- **Co-managers:** Banks in the syndicate who are not bookrunners are most frequently referred to as co-managers. In the international markets, the lead manager and co-managers either jointly and severally or severally but not jointly agree to subscribe to the bonds as initial purchasers, thus "underwriting" the bond issuance and ensuring that the issuer will raise the proceeds intended (with lead managers underwriting a larger share). In practice, the main value of the lead manager is to find investor bids; underwriters typically only take the economic risk of an investor pulling out of a transaction in the final couple of days or so before closing of the transaction. In China, co-managers are effectively hired by lead manager on behalf of the Issuer and promise to purchase any portion of a bond issuance not fully subscribed by investors.
- **Investors:** Most bond investors in the international market are professional investors such as investment funds, pension funds and insurance companies, though bonds in the international market may also be offered and sold to individual retail investors in some cases. Major investors in the China interbank market are the banks themselves, insurance companies, securities firms, and asset management companies.
- **Lawyers:** In the international bond market, it is most common to have at least two law firms involved in each transaction – one representing the lead manager and other banks, and the other representing the issuer. These are usually firms practicing English or New York law, consistent with the most common governing law of internationally distributed bonds and the related contracts. Lawyers for the lead manager prepare the legal documentation, draft the various contracts and provide a legal opinion as to the validity of the bonds and other matters. The issuer's disclosure document is usually prepared by the issuer's lawyers, but lead manager's counsel will also contribute certain sections and be closely involved in the drafting. Depending on where the issuer is incorporated, additional counsel may be appointed to advise on relevant matters of local law.

  In China, usually only one outside law firm is hired by the issuer as deal counsel to manage all legal aspects of the transaction on behalf of the issuer and lead manager. Only licensed Chinese law firms may practice in the Chinese interbank market.
- **Auditors:** In the international market, the main function of the issuers' auditors is to provide "comfort letters" to the managers. The comfort letter confirms the accuracy of the issuer's financial statements (with any material exceptions) and confirms no material adverse change in the financial condition of the issuer since its last audited accounts.

  In China, auditors are only responsible for preparing audit reports in connection with the bond offering and are not expected to provide comfort letters to the lead manager.
- **Clearing systems:** These are large institutions through which investors hold their interests in bonds, allowing trading by electronic book-entry rather than physical movement of securities.

  Typically Euroclear and Clearstream are the clearing systems in international markets; Shanghai Clearing House serves this function in China.

International transactions also feature either a trustee or fiscal agency structure. In China, the functions of the roles of the trustee or fiscal and paying agents are instead generally covered by the lead manager and relevant clearing house.

- **Trustee:** In the international bond context, a trustee is a professional corporation which represents the interests of bondholders during the life of the issue. The trustee is empowered to act on investors' behalf which allows them to make decisions in relation to enforcement actions or make simple technical changes to the documentation where it would not materially prejudice the investors. However, not all international bond offerings feature a trust structure. In bond issuances without a trustee, the investors will have a contractual relationship with the issuer directly and may seek to enforce their rights directly rather than through a trustee.
- **Fiscal agents / paying agents:** Banks which make payments on the bonds to investors on behalf of the issuer and, in the case of a fiscal agent, execute the administrative-only tasks that would fall to the trustee in a trust structure.

The bond issuance process

The following overview of the bond issuance process highlights some of the main features of transactions common to both the international and the Chinese interbank market.

Each bond issuance will start with the grant of a mandate by the issuer to the lead managers to arrange the transaction. The general terms of the mandate are agreed between the issuer and the lead managers at an early stage. Matters agreed early in the process include targeted key commercial terms such as currency, size, tenor/ maturity, price range, credit structure (for example, existence of a guarantee), and intended distribution to investors.

Preparation and negotiation of bond documentation

During the process of preparing to go to market, the lead managers work closely with the issuer and the external legal counsels appointed on the transaction in order to negotiate and finalise the underlying contractual documentation for the transaction:

1. **Prospectus / Offering Circular / Offering Memorandum:** The main disclosure document prepared by the issuer and its counsel for distribution to investors. It forms the issuer's main contribution to the investor's investment decision. It includes information about the issuer as well as the terms and conditions of the bonds. Properly diligenced, the prospectus is an important tool to prevent investors from claiming they were not given all material information about the bonds or that they were misled. In European markets, the document is primarily the responsibility of the issuer in relation to accuracy and completeness and from a liability perspective.
2. **Subscription Agreement:** The agreement under which the syndicate of banks (the "**managers**") agree to subscribe and pay for the bonds from the issuer and the issuer agrees to issue them. The agreement contains representations and warranties by the issuer (and guarantor, where applicable) to the managers as to the validity of the transaction, the accuracy of the prospectus and the general condition of the issuer and the guarantor. It will set out a number of conditions precedent to the managers' obligation to pay for the bonds, such as the provision of letters from auditors, external legal opinions and any documentation required from the issuer. It will contain an indemnity clause, indemnifying the managers against any cost or expense they incur in connection with the issue and will set out selling restrictions which seek to ensure that the managers conduct the offer in such a way as not to require any public registration or other filings.
3. **Trust deed (where a trustee structure is being used)** - the trust deed will constitute the bonds and regulate the relationship of the issuer and the trustee and, in turn, the trustee's relationship with the bondholders.
4. **Agency agreement** - a mechanical document which provides for the appointment of the banks who handle payments due to investors against presentation and surrender of their bonds or coupons and, in the case of a fiscal agent, provides for the administrative-only tasks that would fall to the trustee in a trust structure.
5. **Global Bond** - sets out the detailed terms and conditions of the investment.

Ahead of proceeding with marketing the particular transaction, the lead managers, the issuer, the external lawyers and other relevant agents will have agreed the form of the key legal documents. Once pricing has been completed, these documents are updated with the final details, circulated for approval and then executed by all parties.

Due diligence

Due diligence is, in essence, the process undertaken by underwriters, with the assistance of various professional parties, such as industry experts, lawyers and auditors, with the goal of having no material misstatement or omission in the offering document that investors use to make an informed decision to invest in the securities or not. In China, due diligence is provided by various parties to the transaction such as lawyers and auditors according to specific rules set out by self-regulatory guidelines.

In the international markets, the levels of due diligence applied in connection with an issuance are extremely variable and depend on a number of factors including but not limited to the issuer's track record in the securities markets and credit profile, the intended investor base, and market conventions and practices. In the Chinese market, the

rules governing due diligence are more precise and consistent across the range of issuers and transactions.

Announcement and roadshow
In the international market, an announcement of the transaction typically follows completion of any initial due diligence and drafting of all material documentation. A roadshow, where individual or group meetings or calls take place between investors and the issuer, will usually occur at this point for debut and infrequent issuers. It is worth noting that though information in relation to the issuer's business and the potential transaction is usually presented at these meetings, no hard copy of any presentation is left with investors to emphasise that it is the formal offering documents (i.e., the prospectus) which investors can rely on for their decision on whether or not to invest in the bonds.

Launch and disclosure of terms
In the international market, the common practice is for the lead managers to release skeleton details of the proposed issuance to the market via Bloomberg or a similar screen communication platform. The issuer may then, either directly or through their lead managers, invite other financial institutions to participate in the issuance as a co-manager. Relations between the managers may be governed by a standard form agreement among managers.

Book building and pricing
In the international market, the active bookrunners manage the process of "book building" – generating, capturing and recording investor demand for the bonds (though other managers can also submit investor orders). In consultation with the issuer, the bookrunners will determine the final pricing terms for the issuance and the allocation of bonds to investors. In the international context, the book building process is not explicitly governed by many rules and regulations, and the banks in the syndicate rely more on professional judgment and experience as well as commonly accepted practices that have evolved in the market to balance the interests of the issuer, the investors, and the managers. In China, the book building process is a more tightly controlled auction-style process, governed by NAFMII rules, with an aim to ensure transparency and fairness to investors.

Closing - issue of the bonds
In preparation for closing, the lead managers will liaise with the various parties to the transaction in order to finalise the arrangements for the distribution of bonds and flow of funds. Once the lead managers are satisfied that all conditions precedent to the issuance have been met they will then instruct the common depositary, against delivery of the executed and authenticated global bond, to transfer the net subscription monies to a designated account of the issuer and to request that the clearing systems credit the bonds to the allocated accounts.

It is worth noting that in the international market, the syndicate may appoint stabilising managers (from among the lead managers) who may seek to maintain relative stability in the price of the newly issued bond after it becomes free to trade. There is currently no stabilisation in the Chinese interbank market.

IV. Comparison of international offshore and Chinese onshore primary market practices

A. Summary

The comparison and analysis in this part of the report covers three important aspects of the primary markets common to the international and Chinese markets: due diligence, disclosure, and book building.

While most of the important principles and procedures are similar between the two markets, it is worthwhile to briefly highlight some of the most important differences.

Due diligence

- In the international markets, due diligence is fundamentally a process undertaken by underwriters, with the assistance of various professional parties, such as industry experts, lawyers and auditors, with the goal of having no material misstatement or omission in the offering document that investors use to make an informed decision to invest in the securities or not. Depending on the statutory regime of the jurisdiction, due diligence may be a defence available to underwriters for underwriter liability should it be adjudicated that there was a material misstatement or omission in the offering document on which the investor relied, while the Chinese system have been based on principles of investor protection and symmetric information. However, the motivations for due diligence in the Chinese markets have recently developed to become more consistent with those of the international markets.
- Due diligence in the international markets has evolved over decades based mainly on market practice; due diligence in China is governed by more detailed and comprehensive regulatory guidelines.
- Ongoing due diligence required in China, while due diligence requirement ends at closing in the international markets.

Disclosure

- Various managers of the issuer make different representations and warranties about the accuracy and completeness of the prospectus, and have different potential levels of liability.
- Chinese issuances require more detailed disclosure of the use of proceeds.
- International issuances generally require more detailed disclosure of the terms and conditions of the bond and the rights of investors.
- Some other specific aspects of disclosure, such as disclosure relating to controlling entities, related parties, work safety, and state secrets, are somewhat different between international and Chinese markets due to broader principles of national policy.

Book building

- In the Chinese market, issuers are not involved in the core book building procedure, whereas in international markets, the issuer may be much more involved in the ongoing allocation and pricing discussions with the bookrunners.
- In the Chinese market, the book building process is more akin to a transparent and mechanical auction process, whereas in the international market the allocation and pricing depends more on the subtle conditions of the market and the professional experience and judgment of syndicate managers.

B. Due diligence

What is due diligence?

Due diligence is the process of identifying, processing and validating information about the issuer required for investors to make a reasonable investment decision.

In Chinese and international bond markets, due diligence is an essential part of the offering process. Due diligence, in practice, is a thorough survey of the issuer to ensure the accuracy and completeness of disclosure to investors. Topics covered by due diligence are all those relevant to a decision to invest in the issuer's bonds – including the legal and financial status of the issuer, business operations, management, and strategy.

Effective due diligence is the foundation for the preparation of bond issuance documents and for accurate information disclosure at the issuance stage. In reality, issuers are required to disclose all information required for investors to evaluate and judge the various risks associated with the bonds.

In terms of market practice, there are no major differences in the scope of due diligence between the international capital market and China's interbank bond market.

However, some differences exist in the practical operation of due diligence, based on differences in market development, legal environment, and financial supervision.

Applicable law and guidelines

In the international markets, there is no statutory law (of England, the EU, the United States, or otherwise) to mandate the scope or methods of the due diligence which should be undertaken. In the US, there is considerable case law as well as guidance from the Securities and Exchange Commission on the subject. Due diligence is in part based upon rules regarding liability for negligent misstatements.

As a result, due diligence in the international capital markets is principally a matter of practice which will vary considerably based on the different type of offering, the nature and the geographic location of the issuer as well as the range and type of investors. Each underwriter will also have its own internal practices and requirements with respect to due diligence.

In this respect, the ICMA Primary Market Handbook sets out Recommendation R3.3 and item 3.4 on due diligence:

> "R3.3 The appropriate level of due diligence to be performed in the context of each issue should be considered carefully.
>
> 4.3 It is impossible to prescribe whether or what due diligence procedures would be appropriate in the circumstances of each issue, and procedures will vary greatly from issue to issue (depending, for example, on the type of securities being issued, the rights attached to those securities and the nature of the issuer and its business)."

The Chinese market has more concrete and comprehensive specific standards for due diligence. In 2008, NAFMII formulated the Guidelines of Due Diligence on Debt Financing Instruments of Non-financial Enterprises in the Interbank Bond Market (**Due Diligence Guidelines**) and the Rules for Intermediate Services Relating to Debt Financing Instruments of Non-financial Enterprises in the Interbank Bond Market. The Due Diligence Guidelines are effectively mandatory for participants in the onshore interbank market. NAFMII issued these guidelines in accordance with the Measures for the Administration of Debt Financing Instruments of Non-financial Enterprises in the Interbank Market promulgated by the People's Bank of China

NAFMII's Due Diligence Guidelines govern the due diligence of lead underwriters in the interbank bond market. They cover the definition of due diligence, working requirements, due diligence methods, due diligence report, ongoing and transaction-related due diligence, bring-down due diligence and other aspects.

Why due diligence? Perspectives of the international and Chinese markets

Due diligence is mainly designed to ensure: (1) the information on all material matters in the prospectus is accurate; (2) the prospectus does not omit any important fact necessary for potential investors to make a reasonably informed decision about the issuer's credit.

The main functions of due diligence in the international and Chinese market are generally the same. However, there are some more subtle differences in emphasis and priority. In the international capital market, due diligence is fundamentally undertaken to protect investors from receiving and relying on false or misleading information and avoid issuers' and lead managers' potential reputational damage and civil liability for any resulting losses to investors. In the international context, the underwriter wants to ensure not only that he information on all the material matters in the prospectus is accurate (this process is usually called "review inspection"), but also that the prospectus does not omit any important fact, that is, to ensure correct disclosure of all important information.

China's interbank bond market emphasises the role of due diligence in mitigating asymmetric information and strengthening risk disclosure to investors. The Chinese practices also stress the role of due diligence in promoting more accurate and market-based pricing of debt financing instruments by transmitting authentic and reliable information. Also, due diligence by the lead underwriter will guide the general direction for due diligence by other intermediaries and provide an overall reference for the collective investigation into the issuer.

The international and Chinese approaches are two sides of the same coin. In the international context, the liability standard should result in full material information being provided to investors; conversely, in the Chinese markets a failure to provide adequate and accurate information may result in liability for those responsible for due diligence.

Roles of the parties in due diligence

As far as the contents of due diligence are concerned, there are no major differences between the international market and the Chinese market in the areas of information about the issuer to be investigated. However, when it comes to the entities and specific roles of due diligence, there are some differences.

In the international market, the underwriter and its lawyer will manage the entire due diligence process, but with an emphasis on business due diligence (and, to a lesser extent, financial due diligence). Actual procedures vary from one issuer to another, but almost all the public bond issues will include the comfort letter issued by the issuer's auditor as part of the financial due diligence and one or more legal opinions from the legal advisor as part of the legal due diligence.

In China, the due diligence by the lead underwriter constitutes the foundation of the due diligence on issuer. The lawyer and the auditor are also key members of the due diligence team. The lead underwriter will normally coordinate the independent professional opinions of the lawyer and the auditor with respect to due diligence to arrive at a collective view on the scope and validity of due diligence.

China: Due diligence by lead underwriter

Due diligence by the lead underwriter constitutes the foundation of due diligence for the debt financing instrument. Compared to due diligence by other intermediaries, due diligence by the lead underwriter covers the broadest scope.

It is intended to perform prudential review of the authenticity, accuracy and integrity of the registration document for the debt financing instrument, ensure the information disclosure quality of the debt financing instrument issuance, and provide the foundation for the lead underwriter's expression of the recommendation opinion on the debt financing instrument issued by the issuer.

The core significance of due diligence by the lead underwriter is to mitigate the asymmetric information of the debt financing instrument and increase market efficiency.

Specifically, the functions include mitigating the asymmetric information between investors and the issuer to promote reasonable pricing of the debt financing instrument and reduce the market operation cost; mitigating the

asymmetric information between the NAFMII and the issuer to enhance the efficiency of self-regulatory management and reduce the self-regulatory management cost; exploring the investment highlight of the issuer, promoting the issuer to improve the capacity for information disclosure and compliant operation and assisting the issuer to reduce the financing cost; reducing the supervisory risk, underwriting risk and reputational risk faced by the lead underwriter; and guiding the general direction for due diligence by other intermediaries and providing an overall reference for the latter.

Due diligence by auditor
In the international capital market, the auditor of the issuer will review and validate in detail the financial statements of the issuer and all the financial information disclosed by the issuer in the prospectus, and send a letter of comfort. The letter of comfort records the procedure and result of the auditor. Though different, the procedures usually include reviewing the accounts after the financial report for the previous fiscal year, and discussing relevant negative conclusions and negative changes incurred but not covered in the financial report.

In the Chinese market, the auditor will not be expected to issue a letter of comfort to the underwriter. However, in other aspects the role of the auditor is similar to that in the international market. The auditor will complete a validation of financial information disclosure, and the issuer will provide audited financial reports. An auditor may also issue special opinions on material or doubtful financial treatment issues, if any, and these opinions will be quoted in the prospectus.

Due diligence by lawyer
In China's interbank bond market, the lead underwriter helps the issuer prepare the prospectus of the debt financing instrument, and the responsibility of the issuer's lawyer is mainly to issue a letter of legal opinion on the issuance of the debt financing instrument, with the fundamental function of establishing a legitimate contractual credit relation between the issuer and investors of the debt financing instrument. Therefore, due diligence of the issuer's lawyer mainly focuses on the matters involved in the letter of legal opinion.

In the international market, the issuer must show the capacity to issue securities (for example, its registration document does not forbid securities issuance). The underwriter and the lawyer shall also ensure the debt issuance document is duly authorised by the issuer, and is legitimate, valid, binding and enforceable. Information on the issuer is obtained from the due diligence questionnaire completed by the issuer. The questionnaire can require the issuer to provide duplicates of relevant documents or respond at the due diligence discussion. The interview with the management of the issuer can be an important part of the legal (as well as business) due diligence.

In the international markets, the lawyers for the bond issuer will express legal opinions on the legality of the bonds. Distinctly from any issuer counsel opinion, lead manager counsel may also provide a legal opinion. Lawyers for both the issuer and the underwriter will also assist the issuer to prepare or review bond issuance documents, especially the prospectus. The lawyers of both the issuer and lead managers normally negotiate and determine the scope of legal due diligence. The prospectus is mainly drafted by the lawyers, but the underwriters ultimately manage the due diligence process.

In the Chinese market, the lead underwriter helps the issuer prepare the prospectus for the bond, and the responsibility of the issuer's lawyer is mainly to issue a letter of legal opinion on the issuance of the bond. The due diligence of the issuer's lawyer mainly focuses on the matters involved in the letter of legal opinion.

Other procedures may include that the lawyer reviews major business contracts and other important corporate documents of the issuer, survey key facilities of the issuer on the site and attend meetings with important third parties, such as supervisory authorities, suppliers, customers or banks.

Process of due diligence
The procedure and extent of due diligence depend on the issuer's business nature, type of the issued bonds, bond investor type and issuance place. A high-level issuer often issuing bonds may receive very limited due diligence, while an issuer making an initial issuance in the emerging market will likely receive a higher extent of due diligence.

As a general practice in the international capital market, the procedure and extent of the due diligence depend on the issuer's business nature, type of the bonds issued, type of bond investors and issuance place. The lead underwriter carefully considers the extent of due diligence required based on the concrete conditions of each issuance. An experienced issuer often issuing bonds may receive very limited due diligence, while an issuer making an initial issuance in the emerging market will likely receive a higher extent of due diligence.

Under the current NAFMII rules, in China the extent and procedure of due diligence are the same for high-level issuers with frequent bond issues and issuers making initial bond offering. The due diligence required in China is directly related to the required information disclosure in the prospectus, which generally include:

- business independence
- internal management and operational compliance
- principal operation
- financial standing
- industry and industry prospect
- other material matters
- purpose of raised proceeds; and
- credit standing

In China, due diligence is a collective responsibility of the intermediaries. Each intermediary involved in the bond issuance must adhere to relevant professional responsibility standards and ethics. These include the principles of independence, objectivity, prudence, and confidentiality.

In the Chinese market, methods of due diligence for the debt financing instrument include review, interview, attending meeting as a non-voting attendee, field survey, information analysis, validation and discussion. It must be particularly noted that not all methods apply to all debt financing instrument issuers, and the lead underwriter shall select an appropriate method to perform due diligence according to the issuer's characteristics in industry, organisation and business.

- *Review:* Review relevant documents of the issuer relating to policies and business flows, and understand major policies, business flows and relevant internal control measures constituting the foundation for daily operation of the issuer in a comprehensive manner. The review shall cover organisation, personnel, finance, accounting, asset management, corporate governance and other aspects of the issuer;
- *Interview:* Hold a talk with senior executives of the issuers and leaders of its finance, sales, internal control and other departments to know the latest information of the issuer and verify the existing information;
- *Meetings:* Attend (without voting power) meetings of the issuer relating to the debt financing instrument, such as the shareholder's meeting, meetings of the board of directors, working meetings of the senior management and department coordination meetings;
- *Field survey:* Go to major production site, construction site or other business bases of the issuer to perform a field survey;
- *Information analysis:* Analyse collected information and data to draw a conclusion;
- *Validation:* Communicate and validate with relevant institutions to confirm the authenticity of the conclusions drawn after review and field survey.

In China, due diligence by the lead underwriter for the debt financing instrument is usually divided into three stages: (1) preliminary due diligence, (2) comprehensive due diligence and (3) ongoing due diligence.

Preliminary due diligence means the basic survey performed by the lead underwriter to judge whether the target issuer can issue a debt financing instrument during business development;

Comprehensive due diligence is the process that the lead underwriter knows the issuer in an all-round manner, gets fully familiar with its operating status, risks and problems, and has adequate reasons to assure the issuer can issue a debt financing instrument and assure its registration document and prospectus are authentic, accurate and integral

Ongoing due diligence means that during the duration of the debt financing instrument, the lead underwriter must continuously watch the issuer's profitability, industry trend and remediation of problems found during the due diligence, and adjust the debt issuance plan based on the remediation result.

Under NAFMII's guidelines and market practices, due diligence includes the following steps:

1. Establish a working team: Due diligence team will substantially consist of people from the headquarters of the lead underwriter, and people of the branches will participate and assist;
2. Make the working plan and hold the project initiation meeting: The working plan mainly includes the working objective, working scope, working method, working roles, working time, working flow and participants;
3. Submit due diligence list: It is an important step to perform due diligence, and the issuer must prepare relevant documents in line with the list, and submit the documents to the due diligence team within the specified time;
4. Interview: Based on preliminary analysis of the due diligence documents obtained, the lead underwriter will prepare an interview outline by aggregating questions about the documents and matters that will help understand the issuer's information in depth, and submit the outline to the issuer in advance;
5. Draw due diligence conclusions: The lead underwriter shall complete the working paper based on the due diligence documents obtained and the record of field interviews;
6. Track due diligence: It includes tracking due diligence both periodically and when material events occur.

In the international context, the lead manager's due diligence process is similar, with the major difference that due diligence is not required after the bond offering has closed (which may be contrasted with the Chinese requirement for ongoing due diligence during the life of the bond).

- When an issuer makes an inaugural offering with a new prospectus, the underwriter is likely to put together a due diligence questionnaire, and participate in a series of talks with senior executives of the issuer. The questionnaire will be designed to obtain as much detailed information as possible on all aspects of the issuer's business. However, if the issuer is a frequent issuer with substantial issuance experience, the underwriter will usually only need to update an earlier prospectus (to the extent it does not reflect any material recent developments).
- Before the issuance, the underwriter and the senior executives of the issuer may hold a meeting on the telephone and hold other due diligence meetings.
- As part of the review and validation procedure, underwriters will update relevant contents of the prospectus and discuss the contents with the relevant level of management of the issuer. Underwriters will also review documents provided by the issuer as required by the lawyer of the underwriter.
- The underwriter may also assign its internal credit analyst to perform a credit analysis of the issuer, as part of the due diligence process rather than the separate analysis by a credit rating agency.
- As part of the underwriting agreement, the underwriter will expect to have proper representations and warranties.

Content of due diligence

In both international and Chinese markets, due diligence can be divided into general areas of financial, business, and legal due diligence.

Financial due diligence

Financial due diligence mainly aims to ensure all the financial information contained in the prospectus is accurate and complete. The auditor of the issuer will review and validate in detail the financial statements of the issuer and all the financial information disclosed by the issuer in the prospectus, and send a letter of comfort.

In the international market, but not the Chinese market, a letter of comfort records the review procedure and audit result of the auditor. In both markets, accountants review financial reports and discuss relevant negative conclusions and negative changes incurred but not covered in the financial report with the management since the last updating or filing of the prospectus.

Business due diligence

Business due diligence involves the underwriter's assessment of the issuer's operations and prospects. The analysis is generally both forward and backward looking. With the forward-looking survey, the underwriter must decide the issuer has adequate reputation. Usually, the underwriter will investigate the business plan, forecasts and budget of the issuer, and ensure they are based on adequate and proper assumptions. The underwriter will hold an appropriate discussion with the management of the issuer. If the issuer has a very high rating result, the underwriter will usually not perform such due diligence, unless the underwriter has justifiable reasons to doubt the accuracy of the issuer's rating. If the issuer has a low rating, the underwriter will often perform a credit analysis of the issuer in line with its internal procedures.

Legal due diligence

Legal due diligence is generally limited to checking that the issuer is duly incorporated without any pending insolvency proceedings, has validly authorised the bond issue and that the bonds will generally be legal, valid and binding obligations of the issuer.

C. Disclosure

The international and onshore Chinese bond markets operate under "disclosure-based" principles which place importance on transparency and information for the investor in order to make an informed investment decision.

In parallel with the due diligence process, the disclosure in the prospectus will contain information about the business of the issuer, the financial status of the issuer, legal and regulatory aspects relevant to the issuer's organisation, operations and particular bond offering. Prospectus disclosure will also usually contain a separate section of risk factors (covering all relevant areas), as well as details about the particular terms and conditions of the bond.

The general principle behind disclosure in international bond offerings is that the issuer must disclose all information that an investor needs to make an informed investment decision. This is reflected in the European legislation for prospectuses (the EU Prospectus Directive regime), which also contains specific information requirements for different types of issuer and different types of security. The disclosure rules in the Chinese interbank market, as outlined in detail in NAFMII's Rules for Information Disclosure on Debt Financing Instruments of Non-financial Enterprises.

The level of disclosure in the international market will depend on the planned distribution to investors. The disclosure may vary among debt intended to be sold publicly or privately, or to retail as opposed to only institutional investors. Under the EU Prospectus Directive, the disclosure regime for securities intended to be sold to retail investors is more burdensome, and includes a requirement to include a summary of the offering in the prospectus.

Under the EU Prospectus Directive, the issuer accepts responsibility for the prospectus and confirms that, to the best of its knowledge, the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import.

If the EU Prospectus Directive applies, the prospectus must be reviewed and approved by a national regulator in Europe under EU rules.

In China's interbank bond market, all newly issued corporate bonds must be registered with NAFMII. Similar to the review and approval by a national regulator under the EU Prospectus Directive, NAFMII undertakes only an examination of the general contents of the prospectus and makes no judgment or comment on the value or risk of the investment. In both the international and Chinese markets, the investor must carefully read the prospectus, independently analyse the disclosure, and evaluate the investment risk before buying a bond.

However, in China the issuer will effectively represent the accuracy of disclosure in the prospectus. (Similarly, in the international markets, the issuer represents the accuracy of disclosure to the lead managers.) The board of directors (or equivalent entity) approves the prospectus, and all directors (or equivalent persons) warrant that the prospectus contains no false information, misleading statement or material omission. They bear joint and several strict individual legal liability for the authenticity, accuracy, integrity and timeliness of the prospectus. In addition, the leader of the enterprise and the leader of the accounting department warrant the authenticity, accuracy, integrity and timeliness of the financial information contained in the prospectus. In a Chinese registration document, the issuer explicitly undertakes to perform its obligations in line with laws, regulations and the prospectus. This representation is not required in Europe.

Terms and conditions of the bond (and issuance)

The EU Prospectus Directive requires disclosure of certain information concerning the securities, including provisions relating to the priority of the debt in the issuer's capital structure.

The EU rules set out certain relevant terms that must be disclosed, but market practice is to set out the terms and conditions of the bonds in full, verbatim.

In China, the registration document must contain the following basic terms of the issuance:

- Full name of debt financing instrument
- Full name of issuer
- Outstanding debt by issuer
- Registration notice number
- Term, face value, and issuing price or interest rate pricing method
- Target investors
- Underwriting and issuance
- Issuance date and value date
- Redemption price, method, and date
- Credit rating agency, credit rating result
- Redemption or sellback
- Credit enhancement

The requirements in the EU are similar to those for China but do not require disclosure of the issuer's outstanding debt or the "registration notice number". The EU Prospectus Directive does, however require the following additional disclosure (among other things):

- Form of the issuance (bearer or registered)
- Currency
- Ranking of the securities
- Terms of redemption and repayment (including provisions for early redemption or amortisation)
- ISIN
- Governing law
- Provisions relating to interest payable
- Yield
- Representation of debt security holders
- The resolutions, authorisations and approvals relating to the securities
- Any restrictions on free transferability
- Arrangements for listing (known as admission to trading)
- Any credit ratings
- In certain circumstances
    - withholding tax information
    - terms and conditions of the offer
    - pricing
    - names and addresses of entities involved in placing and underwriting

Use of proceeds

Where the securities have a denomination of less than €100,000, the EU Prospectus Directive requires the issuer to disclose the use of the funds raised, as well as the amount and sources of other funds needed if the debt offering cannot meet the issuer's funding need. In practice, use of proceeds may be disclosed as being for general corporate purposes. The EU Prospectus Directive also requires in certain circumstances disclosure of reasons for the offer, if other than profit generation and/or risk hedging.

Chinese requirements for disclosure of use of proceeds are generally more burdensome than international regulation. A Chinese issuer must disclose the name of the entity using the funds raised, the total amount and calculations of any funding gap. If the funds raised are used for a project, disclosure is required on the project's investment amount, availability of proprietary capital and capital, construction plan, status of approval documents related to land and environmental protection.

Chinese disclosure rules also, unlike the European rules, require a warranty from the issuer that use the funds for production and operation activities of the issuer will comply with the laws, regulations and policies of the state, and that the issuer will disclose relevant information in a timely manner before changing the use of the funds raised during the duration of the bond.

Risk disclosure

The EU Prospectus Directive requires discussion of risks affecting the issuer's ability to repay and the market risks associated with the securities.

In China, the following risks, along with other specific risks related to the current bond issue, are recommended to be explicitly disclosed:

- *Investment risks.* Interest rate risk, liquidity risk and solvency risk.
- *Financial risk.* Risks arising out of financial factors such as asset and liability structure of the issuer; liquidity of assets; debt profile; capital expenditures; returns from investments; restricted assets; non-recurring profits and losses; potential changes in the fair value of derivatives; contingent liabilities; and significant change in material accounting treatment.
- *Operating risk.* Risk arising out of changes in the markets or operating environment relating to the product or service of the issuer; fluctuation of product supply and demand; changes to raw material prices; competition in the industry; influence of the business cycle or product lifecycle; market saturation or market isolation; dependence on single market; market share; and changes in exchange rate and trade environment, as applicable to the issuer.
- *Management risk.* Risk arising out of the instability of management, management system and management policy of the issuer as a result of organisational structure, competition and material related transactions with controlling shareholder and other important related parties, management compensation, subsidiary structure, complex internal equity relationships, possible asset restructuring or change in important shareholders after issuance, and risks related to workplace safety.
- *Policy risk.* Concrete policy-related risks incurred by the issuer as a result of possible changes in laws, regulations and policies of the state. The issuer must disclose potential impact from changes in the fiscal policy, financial policy, land use policy, industrial policy, industry regulation policy, environmental protection policy, tax policy, the business licensing system, foreign exchange system, international antidumping policy, anti-subsidy or special safeguard measures, and policy differences between countries.

Historical evolution

Chinese disclosure rules generally require issuers to disclose more historical information about the evolution of the company.

The EU Prospectus Directive generally requires issuers to disclose some limited information about the issuer's history together with current information relating to the issuer and any recent material events.

A Chinese issuer's disclosure of the historical evolution of the enterprise would include the succession of major entities, the establishment, historical evolution and reorganisation of the enterprise as well as historical changes in the equity structure; important events in the progress of the enterprise over different historical periods, including shareholding reform, material capital increase or decrease, merger, separation, bankruptcy restructuring and name change.

Enterprise Overview

In China, issuers must disclose their governance and organisational structure. Chinese issuers must disclose basic information about their directors, supervisors and senior management, and confirm compliance with China's Company Law and other relevant laws and regulations and the articles of association. In the EU, required disclosure is similar to that in China but does not require a confirmation of compliance with a "company law".

China requires disclosure on specific business segments, including historical operating revenues, operating costs, profits and margin. For any business segment contributing over 10% of the revenue or profit, the issuer must disclose the segment's profit model, industrial chain, production and sales regions, key technical processes and competitive position over the last three years. Disclosure must also include indicators of the company's position and operating advantages in the industry.

Chinese issuers must also disclose details of construction in progress, including the relevant costs, plan, availability of funds and capital, and compliance with applicable law. The EU has no explicit equivalent requirements on ongoing or planned construction. The EU only requires more general disclosure of the main operations, products, and services of the issuer, as well as the basis for any statements made in the prospectus regarding the issuer's competitive position.

Strategy and profit forecasts

Chinese rules require disclosure of an issuer's development strategy and plans for the next three to five years. Under the EU Prospectus Directive, the issuer is not explicitly required to disclose its strategy.

The EU Prospectus Directive mandates, broadly speaking, that any disclosure of profit forecasts (1) includes relevant assumptions upon which the issuer based the forecast, classified into factors that can be controlled or not controlled by the company's management; (2) is made in compliance with the applicable accounting standards of the issuer; and (3) is prepared on a basis that is comparable to financial information for previous years included in the prospectus.

Controlling shareholders and actual controlling interests

The EU Prospectus Directive requires disclosure of controlling ownership interests of the issuer. However, compared to the Chinese rules, it only requires the disclosure of information to the knowledge of the issuer.

This may be due to different legal and ownership structures common in the Chinese as opposed to European markets. Chinese issuers often have partial state ownership, while multinational corporations may have diverse forms of organisation spread across international entities with different structures.

Chinese issuers must disclose corporate and business relationships with the controlling shareholder in terms of assets, personnel, organisation, finance, and business operations. China requires disclosure of controlling shareholders and the actual controlling entity or person, including relevant shareholding ratios. Under the EU Prospectus Directive, the issuer is generally required to disclose, to the extent known to the issuer, whether the issuer is directly or indirectly owned or controlled and by whom, and describe the nature of such control, and describe the measures in place to ensure that such control is not abused.

In China, if the controlling shareholder is a natural person, relevant information must be disclosed including the person's name, brief background and pledge of shares in the issuer, as well as major investments of the natural person in other enterprises and the person's relationships with other majority shareholders. If the controlling shareholder is a legal entity but not a natural person, disclosure must be made of the entity's name, establishment date, registered principal, principal operations, asset size, revenue and profit, as well as changes and pledges of the issuer's shares held by the legal person.

With respect to material equity investments, Chinese issuers must disclose shareholding ratios in consolidated subsidiaries. They must also disclose reasons for consolidating subsidiaries in which they hold less than 50% of shares, or not consolidating subsidiaries in which they hold more than 50% of shares. Disclosure must also be made on subsidiaries having material influence on the enterprise, including principal operations and major financial data (including assets, liabilities, owners' equity, revenue and net profit) over the past year.

The EU Prospectus Directive does not require the issuer to fully disclose operating information related to all subsidiaries. The Chinese rules require the issuer to disclose the financial information of its subsidiaries over the past three years, while the EU Prospectus Directive requires the issuer to disclose at least its consolidated financial information in respect of the past two years, with some exceptions.

Material contracts and related transactions

Broadly, the EU Prospectus Directive requires the issuer to disclose a brief summary of all material contracts that are not entered into in the ordinary course of the issuer's business, which could result in any group member being under an obligation or entitlement that is material to the issuer's ability to meet its obligation to security holders in respect of the securities being issued.

China requires the following disclosure with respect to related transactions:

- Contents of the related transaction policy, including without limitation to pricing principle, decision-making procedure and decision-making mechanism.
- Contents and changes of accounts payable, accounts receivable, other payables, other receivables, cash flow and other subjects relating to operating activities.
- Related transactions as to overview, reason, pricing basis, settlement mode, impact and fund occupation over the past year.

Matters of national importance

The Chinese rules require disclosure of information related to work safety.

The EU does not set explicit requirements for disclosure of work safety issues in the prospectus, but national competent authorities can ask for adapted information for issuers engaged in mining, and other specific, listed industries.

China requires the following disclosure from the issuer with respect to work safety:

- Prior history of material safety accidents, including basic information of the accident, determination of relevant state authority for accident reason and nature, relevant remediation requirement for the issuer and subsequent inspection and acceptance.
- Internal control systems and relevant emergency response plans relating to work safety.
- Concrete measures relating to work safety management and status of implementation.
- Work safety inspection records over the past three years.

The Chinese prospectus also requires a provision related to national secrets. The issuer represents that "this Company warrants that all the information disclosed by this Company for the issuance of the debt financing instrument does not involve national secrets, and this Company shall exclusively undertake any consequence arising out of the public information disclosure." This is a China-specific provision not required in the EU.

Financials

China requires disclosure of audited financial reports over the past three years, as well as disclosure of any material changes in accounting policy. With some exceptions, the EU Prospectus Directive requires disclosure of audited financial statements for the past two years. Under the EU Prospectus Directive, if the issuer is from a member state of the European Community (EEA), the issuer should disclose financial statements in line with EU IFRS (or, in certain circumstances, the accounting standards of its home state).

An issuer from another country must either disclose financial information in accordance with international accounting standards or equivalent national accounting standards. If the issuer is offering securities in denominations of at least €100,000, it has the option to disclose financial information prepared to an alternative standard but it must disclose (1) that the financials are not disclosed in line with the international accounting standards, and may differ from general standards; and (2) a description of discrepancies from the international accounting standards.

Under Chinese rules, the issuer must disclose the balance sheet, income statement and cash flow statement over the past three years and the most recent period, and specify data sources. If the company prepares the consolidated financial statements, the company must simultaneously disclose the consolidated financial statements and the financial statements of the parent.

Broadly, under the EU Prospectus Directive, the issuer should disclose:

- If the issuer prepares both own and consolidated financial statements, at least the consolidated financial statements. The last year of audited financial information may not be older than 18 months from the date of the registration document.
- A statement that the historical financial information has been audited. If the audit reports on the financial information have been refused by the audit firm or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.
- An indication of other information in the registration document which has been audited by the auditors.
- Where financial data in the registration document is not extracted from the issuer's audited financial statements, the source of the data and a statement that the data is un-audited.

Asset-liability structure

In line with standard accounting procedures, issuers in the Chinese market should analyse the change and reason for the change relating to any asset contributing over 10% of total assets, or any liability contributing over 10% of total liabilities, or the any material accounting item being affected by a change of more than 30% over the past year and the most recent period.

Asset restructuring

China requires the following disclosure with respect to asset restructuring:

- Potential risk arising out of the material asset restructuring.
- Any asset restructuring plan, current stage, completed legal procedure, compliance of restructuring process and influence on the qualification as the debt financing instrument issuer and validity of its resolutions.
- Comparable financial data over the past three years and the most recent period.
- An analysis of the influence of the restructuring on its production, operation and solvency.

Financial indicators: In China, issuers must disclose data on solvency, profitability, operating efficiency and other relevant financial indicators and reasons for their changes over a three-year historical period. Under the EU Prospectus Directive, the issuer is generally required to disclose a description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial information or interim financial information have been published, or an appropriate negative statement.

Interest-bearing liabilities. Chinese rules specify an issuer must disclose the amounts, repayment and other key terms, and credit support structures of interest-bearing liabilities.

Contingent liabilities. Chinese rules require disclosure of external guarantees, pending litigation and arbitration, material commitments and other contingent liabilities in the most recent period. Under the EU Prospectus Directive, issuers are required to disclose information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past, significant effects on the issuer and/or group's financial position or profitability, or provide an appropriate negative statement.

Restricted assets. Chinese issuers must disclose the mortgage, pledge, lien and other purpose restrictions over assets in the most recent period as well as other priority of debt repayment that can challenge third persons. The disclosure contents include but are not limited to asset names, mortgagee/pledgee, book-entry value of asset and term.

Derivatives. Chinese issuers must disclose names, trading purpose, trading structure, nominal principal and profit/loss of the derivatives held in the most recent period.

Taxes: Issuers in the Chinese market must disclose tax payable on the investment in debt financing instrument and tax policies relevant to the issuance and the issuer's financials. Chinese disclosure also requires a representation that tax disclosure does not constitute tax advice or for investors. Under the EU Prospectus Directive, if the securities have a denomination of less than €100,000, issuers must disclose, in respect of the country of the issuer and the country(ies) where the offer being made or admission to trading is being sought, information on taxes on the income from the securities withheld at source and an indication as to whether the issuer assumes responsibility for the withholding of taxes at the source. It is also market practice to include tax disclosure for securities with a denomination of at least €100,000.

In addition to the above, Chinese rules require disclosure of the following aspects related to the balance sheet:

- Material investment products and wealth management products – including trading purpose, structure, nominal principal amount, and recent profit/loss on the investment
- Overseas investment – including amount and relevant operating data
- Direct debt financing plan – including amount and progress in implementing the plan

With respect to the credit standing of the issuer, Chinese rules require the following disclosure:

- Credit ratings – historical over the last three years, with the credit rating agency and explanation of any symbols
- Credit facilities – lines of credit, and disclosure of which ones are used and unused
- Default record – Amount, time, reason and resolution progress of debt default over the past three years and the most recent period
- Historical issuance and repayment of debt

Credit enhancement

China requires the following disclosure with respect to credit enhancement:

- Information about the relevant institution. If the credit enhancement is provided by a professional credit enhancement institution, the issuer shall disclose the information in line with NAFMII's Self-regulatory Management Rules of China Interbank Market Concerning Credit Enhancement Business. If the credit enhancement is provided by other enterprises, the issuer shall disclose the information on relevant enterprises in the same way as the issuer.

- Contents of the guarantee or relevant credit support agreement, including amount, term, scope; rights and obligations of the enterprise, guarantors and creditors.
- Name of the collateral, the amount of the collateral (book-entry value and appraised value) and the ratio of the amount to the total face value and total principal and interest of the issued bond as well as evidence of any relevant collateral appraisal, registration, preservation and legal procedures.
- Relevant documents to certify security, mortgage, or pledge.
- Ongoing disclosure in case of material changes in the credit of the guarantor or collateral.

The EU Prospectus Directive requires disclosure of information on the provider of credit enhancement in line with the disclosure requirements for the issuer. Broadly speaking, disclosure must also include the terms and conditions for the validity of the credit enhancement, and whether or not the provider of credit enhancement enjoys a veto on the change of bondholders.

Institutions related to the issuance

Under both Chinese and EU rules, the issuer must disclose basic legal and contact information about institutions related to the issuance, including the underwriters, legal counsel, accounting firms, and as applicable, the credit rating agencies, credit enhancement institution, registrar, depositary, clearing agent, and other agents.

Under Chinese rules, the issuer must disclose material relationships between the issuer and related institutions or personnel of those institutions. Similarly, under EU rules, the issuer must disclose any persons or institutions interested in the recent issuance, with details of any conflicts of interest.

Reference Documents

In both the Chinese and international markets, an important aspect of disclosure is the set of documents incorporated by reference into the prospectus.

In China, these documents include the registration notice, public disclosure document and relevant approval documents on projects funded with the proceeds.

In the EU, documents incorporated by reference commonly include the financial information required to be disclosed. In addition, the EU Prospectus Directive requires the issuer to disclose where certain information can be inspected, including the issuers' articles of association, all reports, letters, other documents, historical financial information, information about valuation, information documents provided by third parties which is included or referred to in the prospectus.

D. Book building

In the context of a bond offering, "book building" is the process by which an underwriter attempts to determine at what price to offer a bond based on market conditions and demand from investors.

Generally, primary debt issuance in the international market features a shorter book building process than in China and fewer restrictions on the flow of information, subject to the general insider information regime.

Role of the underwriter
The international capital market relies more on the lead underwriter's experience and professionalism to guide the price dynamically before the final price is fixed. The lead underwriter will have some flexibility to decide at what time to publish the price, react to changes in global market conditions, and coordinate among international investors and distributors during the book building process.

China sets relatively detailed requirements mainly by NAFMII's self-regulatory framework for the issuance document and information flow to ensure the fairness of the issuance and allocation process. In China, pricing is also managed by the lead underwriter, but is a simpler process, less iterative, and completed at one time during the book building process. China sets the standard distribution flow and distribution period during book building, but the international capital market usually does not include the distribution flow.

Role of the issuer
The EU does not explicitly restrict the issuer from participating in the book building process. On the other hand, in the Chinese market, the book building process is organised by the lead underwriter, and the issuer is relatively isolated from investors.

Setting of distribution period
The international capital market does not set mandatory requirement for the issuance announcement and the payment notice, but requires the issuer to publish an announcement to the market at closing. China's interbank bond market sets express requirement issuance announcement and the payment notice. The international capital market does not set mandatory requirement for the issuance announcement and the payment notice, and China's interbank bond market sets express requirement issuance announcement and the payment notice.

In the overseas market, if the issuer finds a price advantage during book building, it can further optimise the price with simple steps. In China, if the same situation occurs, the issuer can also adjust the price range of book building and publish an announcement to the market. In the international capital market, if the issuer encounters favourable price momentum during book building, the issuer can further optimise the price.

International book building process

The book building process of an international bond offering is essentially a pricing discovery process between the joint bookrunners and the global investors. The joint bookrunners' objective in the book building process is to achieve the best pricing and sizing target for the issuer, commensurate with the issuer's sizing, pricing, tenor, distribution and ongoing market access objectives. The investors' objective in the book building process is to discover and achieve the pricing that meets the investors' risk and return targets.

The marketing of an international bond offering by a new or infrequent issuer is usually conducted through a global roadshow meeting with international investors. The purpose of the roadshow is to introduce the company's credit highlights, business strategies and recent developments to investors, maximising investors' attention and interest in the proposed offering and guiding investors to purchase the securities at the pricing range set by the joint bookrunners.

Usually a message of roadshow mandate will be sent to international investors at the opening time of the markets and the joint bookrunners of the transaction will decide to proceed with the transactions or not based on market conditions. This process is ongoing, however, and the result of the roadshow will not definitely determine whether or not the transaction proceeds to completion.

After investor meetings, the sales teams from the joint bookrunners will follow up with respective investors for feedback. The feedback collected through a roadshow usually serves as an important indication for the joint bookrunners to formulate an initial pricing view before the book building process starts. With sufficient and constructive investor feedback, the joint bookrunners decide on the "initial price guidance" (or more tentative "initial price thoughts") to start the book building process with the issuer's permission.

1. *Determine preliminary price range.* Determine preliminary guide in line with market situation and comparable deals.
2. *Investor feedback and discussion*. Investors give feedback, and the underwriting syndicate and the sales team communicate with investors. The sales team will mainly market credit highlights of the issuer mainly to global key investors, and guide investors to respond to the price range suggested by the book builder.
3. *Announce final price guide to the market*. The strategy to achieve the optimal price is to adopt the book building method, and the book runner will guide the market to realize the best momentum and achieve the optimal price.
4. *Price optimisation.* Investors give further feedback, and the underwriting syndicate and the sales team communicate with investors. Book building momentum will allow the issuer to further optimise the price over the price guide range published later.
5. *Decide final interest spread and size.*
6. *Announce investor allocation result.*
7. *Decide final price.*
8. *Execute subscription agreement.*
9. *Enter preliminary settlement instructions.*
10. *Perform final condition precedent checks.*
11. *Release issue proceeds to issuer against delivery of live global bond.*

A debut/infrequent issuer may initially approach banks for a possible transaction several weeks prior to public announcement (to allow for initial preparation), with a couple weeks then for a marketing roadshow prior to opening order books. A frequent issuer might contact banks for an immediate public announcement and simultaneous opening of order books.

From opening of order books to pricing is then usually intra-day business.

Pricing to closing tends to be five working days, with contractual signing two working days before closing and settlement.

Chinese domestic bond book building process

1. *Determination of preliminary price range.* After review of preliminary disclosure from the issuer, as well as the prevailing rates in the markets, the issuer and the lead underwriter determine the issuing interest rate range and will sign a letter confirming the price range for book building.
2. *Subscription offer.* The lead underwriter sends a subscription statement to members of the underwriting syndicate one day before the issuance, and publishes the statement to the market. This subscription statement includes major terms of the bond, the interest rate range of the bond, the subscription timeline and procedure, placement and payment terms of the bond, the contact information of the book runner, the designated payment account and other information.
3. *Placement and payment.* If the issuance uses the same book building process as public offering, each subscriber submits a binding, written subscription offer. The book runner notifies the underwriter of the issuance interest rate determined in line with the size of the bond and the book building process.
4. *Distribution.* The book runner sets the distribution period based on the investor demand, and arranges for

members of the underwriting syndicate to distribute the bond. The distribution period starts on the book building date and ends on the payment deadline.

5. *Listing and trading.* The members of the underwriting syndicate complete all placements to institutions outside the syndicate through distribution as stated in agreement among issuer, lead underwriter and other underwriters. The bond can circulate and trade in the interbank bond market from the first business day after payment is complete.

V. Recommendations

By comparing practices in China's interbank bond market and the primary international bond market, China could on one hand, draw on useful experience from the international market to align in appropriate ways with the international system, promote the opening up of the Chinese capital market and broaden cooperation between China and the global capital markets. On the other hand, the comparison also enables overseas institutions to better understand China's current market system and help more qualified overseas issuers and investors to enter the Chinese interbank market. NAFMII and ICMA will continue to undertake cooperative studies to promote mutual understanding and facilitate the common development of their bond markets.

A. Drawing on the information disclosure system from the international market

As the key element of NAFMII's registration system, information disclosure will continue to be improved in its effectiveness and soundness in order to better protect investors. In the international market, requirements on information disclosure concerning bond issuance to institutional investors are simpler than those concerning bond issuance to retail investors. With the development of China's real economy and market, it may be considered to remove unnecessary requirements and reasonably reduce the cost in information disclosure, consistent with the needs of investors. Efforts will be made to promote the integration of registration information disclosure and continuous information disclosure. International market practices such as medium-term note programmes and the shelf registration system are potential points of reference for China's interbank bond market.

B. Further developing due diligence standards

Market conventions with respect to due diligence have evolved over the long term in line with business practices in the capital markets. In view of the experience in the international market, NAFMII shall fully utilise the expertise of lawyers and accountants in their respective fields, and appropriately enhance their role in the due diligence process. Meanwhile, NAFMII will organise market players to revise relevant industrial standards or operational guidelines and update them from time to time according to market needs.

C. Further streamlining the issuance process and intensifying self-regulation during issuance

To improve issuance procedures in China's interbank bond market, it is helpful to draw upon international experience in book building. NAFMII shall optimise the issuance process in the domestic market, especially for relatively seasoned issuers, and enhance the role of self-regulation during issuance. NAFMII will also plan to streamline the requirements on information disclosure and review for registration to make the overall issuance process, including the book building stage, more efficient.

Conversely, certain aspects of the book building process in China's interbank bond market are of interest to international market participants and policymakers, and in particular could generate new ideas on how to further improve the transparency of book building in the international market.

VI. Appendices

A. Practices in the international debt capital markets

1. Due diligence

2. Disclosure in the prospectus

3. Book building of an international bond offering

1. Due diligence

Background

In the context of a securities offering, due diligence describes the process that an underwriter of debt securities may conduct, both independently and together with the issuer, in order to establish the completeness and accuracy of the information contained in the disclosure document used in connection with the offering. This disclosure document is known as the prospectus.

The due diligence process involves the collection, organisation and checking of information relating to an issuer of securities, the securities themselves and such other information as an investor may need in order to make an informed investment decision in relation to those securities.

In essence, due diligence is an investigation of an issuer's business, financial position and prospects. The underwriter will want to be confident that:

(i) the information contained in the prospectus is accurate in all material respects (this process is often referred to as "verification");

(ii) the prospectus does not omit any material facts (in other words, all material disclosure has been made); and

(iii) there are no other facts that would mean that the issue could not proceed -- even with adequate disclosure.

Why do due diligence?

The participants in the due diligence exercise are seeking to benefit from any defence to liability which may be available and to establish that due care has been taken to rebut any claim based on negligent misstatement.

What is the likely nature of a claim?

Most systems of securities regulation require that a disclosure document or prospectus is used in order to offer and place securities. The primary responsibility for the completeness and accuracy of the prospectus is placed on the issuer.

The particulars of any claim will depend upon the laws of the relevant jurisdiction(s) governing the debt securities as well as where they are sold or listed.

Claims tend to fall into one of three categories: misrepresentation, strict or other liability under relevant investor protection statutes or a claim for negligence. It is less likely that a claim will succeed where all material disclosure has been made and in some jurisdictions there are specific protections or exclusions from liability where the issuer and the underwriter have exercised a reasonable standard of care in the preparation of the prospectus.

How is due diligence undertaken?

The most common way in which an underwriter in the international capital markets will seek to discharge its reasonable standard of care is through so-called "verification" and "due diligence". Verification and due diligence are each directed towards separate concerns:

(i) Verification
Verification is where all the statements in the prospectus are checked to ensure that they are true, accurate and not misleading. It usually applies in venues that mandate it (such as some stock exchanges). Otherwise, verification may not be required or performed.

(ii) Due Diligence
Due diligence goes further than verification and will normally involve a more wide ranging review of the issuer and its business including (1) financial due diligence, (2) legal due diligence and (3) business due diligence.

The underwriters and their lawyers will manage the due diligence process as a whole but the underwriters are themselves principally responsible for the business due diligence (and to a lesser extent financial due diligence). Although the actual procedures undertaken in respect of (1), (2) and (3) described above will vary from issuer to issuer, on almost all public offers of debt securities a comfort letter from the issuer's auditors will be delivered as part of the financial due diligence and one or more legal opinions from the legal advisers retained will be delivered as part of the legal due diligence.

A substantial amount of information about the issuer is derived from the issuer's responses to a due diligence questionnaire. The questionnaire may ask for copies of documents or written responses to queries or it may ask the issuer to discuss responses at a due diligence meeting. Interviews with the issuer's management can be an important element of due diligence.

What types of due diligence are there?
The underwriter in an offering of debt securities will work closely with the lawyers to ensure that they understand the commercial issues so that adequate protections, such as representations, warranties and covenants are included in the legal documentation. In turn, all parties will work with the issuer, any local lawyers and the auditors.

The following is a summary of financial, legal and business due diligence:

(1) Financial due diligence
Financial due diligence focuses on ensuring that all financial information which is included in the prospectus is accurate and complete. The issuer's auditors will review in detail the issuer's financial statements and verify any financial information included in the prospectus with a view to issuing a comfort letter. The comfort letter describes the procedures undertaken by the auditors and the conclusions drawn by them as a result. These procedures vary but typically include a review of available post year-end accounts and discussions with management based on which certain conclusions are expressed as to the absence of adverse changes in identified financial statement items since the date of the last set of accounts disclosed in the prospectus.

The level of reliance an underwriter may place on the conclusions of third party experts such as auditors varies. The US market is an example of a higher standard where, while the underwriter is not expected to be a trained accountant, it is expected to be alert to inconsistencies in the audited financial statements (termed "red flags" after the U.S. *WorldCom* case – see detail below). If there is a red flag then the underwriter needs to look behind the audited results, and it may be liable to investors who have suffered a loss where it fails to do so.

The format of the auditors' comfort letter in the Euromarket is fairly standardised. ICMA worked with the main UK accountancy firms to produce a standard form comfort letter (accompanying a standard form arrangement letter), which is aimed at stand-alone investment grade debt issues. In the US market, the form of comfort letter which the underwriter will seek is the statement of accounting standards (**SAS**) 72 comfort letter. This comfort letter is available within 135 days of the issuer's latest audited or reviewed financial statements.

The WorldCom 2004 litigation:
While Sections 11 and 12 of the US Securities Act of 1933, as amended (the Securities Act) establish strict liability for false and misleading statements in prospectuses, both sections permit underwriters to defend a claim by showing that they performed reasonable due diligence. In addition Section 11 permits underwriters to rely on experts' reports such as audited financial statements. However, in the WorldCom litigation Judge Cote concluded that underwriters cannot rely solely on audited financial statements in circumstances where there are sufficiently serious "red flags" indicating that those financial statements could not be relied upon without additional due diligence procedures. The Court also held that the receipt of auditor comfort letters was not conclusive evidence of a reasonable due diligence investigation with respect to unaudited interim statements.

Judge Cote's opinion does not provide detailed guidance on how much diligence is enough, or when any particular piece of information will be found to rise to the level of a "red flag" requiring further investigation Instead, other than the obvious guidance that more diligence is better, underwriters will be subject to a court's interpretation.

(2) Legal due diligence

It is important to establish that each issuer is properly incorporated in its jurisdiction, that it validly exists and that it has the capacity to issue the securities (e.g. that there are no provisions in its incorporation documents that would prohibit the proposed issuance). The underwriter and its lawyers will also want to ensure that the debt issuance documentation has been properly authorised by the issuer, that it constitutes legally valid, binding and enforceable obligations.

In the context of a US transaction (e.g., where notes are sold to investors under Rule 144A of the U.S. Securities Act of 1933, as amended (the **Securities Act**)), the issuer may be required to set up a data room containing all of the its material contracts, which would be available for review by the underwriter's lawyers. The relevant lawyers may sometimes also be asked to investigate and confirm that the issuing of the debt securities does not put the issuer in breach of any covenants in any of its outstanding senior debt documents or other material agreements; this procedure is most likely used for a debut issuer or an issue with highly structured covenants such as with high yield issues.

In addition, for Rule 144A issuances, both issuer and underwriter's counsels will be asked to deliver a 10b-5 letter, which is a negative assurance letter (not a legal opinion) to provide negative assurance with respect to material misstatements and omissions in the offering document.

(3) Business due diligence

This mainly involves the underwriter looking at the prospects of the issuer. The underwriter may look at the issuer's strengths and weaknesses, production, sales, marketing, research and development and future strategy. The analysis will be both forward and backward looking. Forward looking diligence involves the underwriter determining that the issuer is sufficiently credit worthy and may involve looking at the issuer's business plans, forecasts and budgets and ensuring that each has been properly prepared and are based on appropriate assumptions and will usually conduct appropriate discussions on them with management. Where an issuer is highly rated it is likely that this diligence may not be undertaken unless there are reasons to doubt the rating. For a low or unrated issuer, an underwriter may wish to conduct its own internal credit analysis.

The procedures in relation to backward looking due diligence (i.e. reviewing the accuracy of historical disclosure) are described in "Due Diligence Procedures" below.

Verification and due diligence

The main purpose of verification and due diligence is to establish that the prospectus prepared by the issuer in connection with an offering presents a fair and balanced impression of the issuer's affairs and that, in doing so, it does not misrepresent or omit anything material.

There are two general points which should be borne in mind when considering the relevance of verification and due diligence in the context of limiting liability. Although verification and due diligence procedures are normally determined by the underwriter, it is in the interests of both the issuer and the underwriter to ensure that the process is conducted and recorded in a full and meaningful way.

Due diligence procedures

The extent of due diligence procedures will vary, depending on a number of matters, including the nature of the issuer and the securities offered, the investor base and where the securities are listed.

The ICMA Primary Market Handbook sets out Recommendation R3.3 and item 3.4 on due diligence:

> "R3.3 The appropriate level of due diligence to be performed in the context of each issue should be considered carefully.
>
> 3.4 It is impossible to prescribe whether or what due diligence procedures would be appropriate in the circumstances of each issue, and procedures will vary greatly from issue to issue (depending, for example, on the type of securities being issued, the rights attached to those securities and the nature of the issuer and its business)."

Underwriters of securities in the international capital markets will typically follow ICMA guidance.

When considering what counts as an "appropriate level" of due diligence, the guidance leads you back on the standard of what is reasonable in the circumstances of the particular issue, including those factors listed in the ICMA Guidance.

Therefore, generally speaking, it is likely that the most limited procedures will be undertaken for a highly rated frequent issuer whereas an issue by a sub-investment grade debut issuer in an emerging market might merit a higher degree of due diligence.

Generally, the due diligence procedure which an underwriter may adopt for issues of debt securities in the Euromarket could potentially involve, as appropriate in the specific circumstances:

- A first time, or very infrequent issuer where a new prospectus is drafted, the starting point will either be the delivery of a due diligence questionnaire or a series of meetings at which presentations are made by the issuer in respect of its business. The questionnaire will be detailed and will be designed to elicit as much information as possible about all relevant aspects of the issuer's business. In contrast, where the issue is by a frequent issuer, the preparation involves updating to the extent necessary, the previous prospectus.
- Examples of steps taken to complete the due diligence:
  - (i) A telephone call between the underwriter and senior management of the issuer before the issue is launched. The purpose of this call is to obtain confirmation that there are no significant factors affecting the issuer which have not been made public and which, if they were made public, might affect an investor's investment decision. This procedure might be used for all issuers except, possibly, a highly rated frequent issuer.
  - (ii) A due diligence meeting where a formal due diligence questionnaire is delivered in advance and answered by duly authorised members of management. This could be done in a meeting or by telephone conference call. This procedure might be used for an infrequent but still credit-worthy issuer.
  - (iii) As part of the verification, there might be on-going reviews of the prospectus and discussions with appropriate members of management as to its content. The purpose here is to check that there is no material misstatement in the prospectus and that there is no material information excluded from the prospectus. This review and discussion process is used in the context of a first time issuer and might also be used where the issuer lacks experience in preparing disclosure documents or where considerable time had elapsed since the disclosure was last updated.
  - (iv) There may be a documentary review based on a list of documents submitted by the underwriter's lawyers. The list will typically include the incorporation and authorisation documents of the issuer, certain of the company's material commercial contracts and borrowing documentation. The issuer may set up a data room if there are substantial documentary requirements. It would be unusual to have a documentary review for an established borrower.
  - (v) An underwriter might also undertake its own credit checks by internal credit analysts.
  - (vi) As part of the subscription agreement, the underwriter will want to ensure that it receives appropriate representations and warranties from the issuer and these will need to be confirmed by way of a certificate delivered at closing. The underwriter will always require an indemnity from the issuer for actual or alleged breaches of the representations and warranties.
  - (vii) Although relatively uncommon in the Euromarket, other procedures could include a review by lawyers of the issuer's major commercial contracts and other significant corporate documents, site visits to the issuer's key facilities and interviews with important third parties such as regulators, suppliers, customers or lenders having a relationship with the issuer. These procedures are more common for issues to be sold into the U.S.

U.S. style due diligence

The following procedures are an example of those that may be undertaken for a debut issuer seeking to access the 144A market, but those for more frequent issuers perhaps accessing the market via an SEC shelf take-down may vary significantly.

The procedures for a debut bond issue undertaken for due diligence in U.S. issues do not differ to a great extent, except in the depth of investigation, from the procedures set out above. The principal difference is that whereas in European issues only certain of the procedures listed may be used, in U.S. due diligence all the procedures are likely to be used during the course of each due diligence exercise.

A thorough due diligence investigation can form the basis of a due diligence defence for actions under the Securities Act and the U.S. Securities Exchange Act of 1934 (the **Exchange Act**). In the U.S., liability for the prospectus extends beyond the issuer of the debt securities to include the underwriters. Due diligence is therefore very thorough so as to allow the lawyers to issue a "10b-5 letter" which states, in effect, that in the course of a law firm's work on the registration statement, or in the context of an issue of securities under Rule 144A, nothing has come to their attention which gives them reason to believe that it contains any material misstatement or omission of a material fact.

As in European due diligence, tasks are allocated so as to reflect the professional expertise of the parties involved (i.e., investment bankers, lawyers and auditors), but it may be that further specialist expertise is required generally, or to draft specific parts of the prospectus (e.g., mining consultants, shipping brokers).

Early on in the process, the underwriter will attempt to become as familiar as possible with the issuer's industry. Documents that are reviewed will include prospectuses, annual reports and analysts' reports with respect to other corporations in the issuer's industry. The underwriters also typically consider bringing their research analyst "over-the-wall" to assist in due diligence. If the industry is highly regulated (e.g., insurance, communications, banking, etc.), the underwriters will typically review and become familiar with the major regulations in the industry and how they might affect the business of the issuer. The underwriters will also want to understand the accounting practices followed in such industry and whether there is variance among companies in the industry. The issuer's auditors will assist with this. If appropriate to the issuer, the underwriter and its lawyers will visit one or more of the issuer's facilities (e.g. a factory) if only to get a feel for the business.

Lawyers for the underwriters will produce a document request list, which will ask for specific documents as well as general categories of documents (e.g. loan agreements, material contracts). The documents will usually be sent to the lawyers (or copied) but there may also be visits to the issuer's offices to inspect the originals.

Prior to a line-by-line drafting session of the prospectus, one or more meetings are usually held with the principal officers of the issuer. Often, the issuer, if asked, will organise a presentation by the operating officers from each of its major operating subsidiaries or divisions in order to give the underwriters and their lawyers a general overview of the issuer's business. The underwriters and lawyers will want to have a separate meeting with specific officers or employees of the issuer that are responsible for key areas, e.g., depending on the business, government regulation, environmental compliance, employee relations, intellectual property or litigation. There will be a meeting with the chief executive officer and chief financial officer of the issuer to review broad aspects of the issuer's business as well as obtain their personal assessment of the issuer's strengths and weaknesses.

The issuer's auditors perform two functions in U.S. due diligence: (i) as experts regarding the audited portions of the prospectus, via provision of a comfort letter in line with SAS 72; and (ii) as an important source of information about the issuer's financial statements, accounting records and accounting policies and practices. The latter of these two roles assists the underwriters in performing the appropriate investigation of the issuer's business, although recently U.S. auditors have tried to distance themselves from the due diligence process by placing self-imposed limits on their involvement. U.S. auditors are currently in discussions with underwriters and other market participants as to their future level of involvement in the due diligence process, but pending the outcome of these talks underwriters should ask questions of the auditors, including with respect to:

- changes or proposed changes in accounting policy (either by the issuer or with respect to the issuer's industry);
- possible fraud or illegality;
- adequacy of accounting controls;
- capability of the financial and accounting team of the issuer;
- reportable conditions; and
- Issues identified in annual management letters.

Given the auditors' knowledge of the issuer and its business, it is preferable to have the accountants present during drafting sessions to the extent practicable.

The underwriters should also consider having discussions with the issuer's major lenders as well as several of the issuer's major suppliers and customers. These discussions should be without the issuer present (the issuer's lawyers may attend, at the discretion of the underwriter), though with a debrief discussion of the results with the issuer afterwards. These discussions, particularly the discussions with customers and suppliers, should be at a point well into the due diligence process when the underwriters have a good understanding of the issuer's business and therefore can have more meaningful discussions with such parties.

In most offerings, the issuer is required to include detailed information with respect to its officers and directors. It is standard procedure for the issuer's lawyers to prepare and circulate an officers' and directors' questionnaire to each relevant officer and director of the issuer. Lawyers for the underwriters will review the completed questionnaires and compare the answers with the information in the prospectus as currently drafted. Discrepancies will be followed-up.

Due diligence is crucial at the start of the issue process, when negotiating the underwriting agreement (e.g. in terms of representations and warranties) and comfort letters, and in the later stages, when drafting and reviewing the prospectus. To reflect its importance, the underwriters' lawyers will often prepare a due diligence memorandum. This provides a summary of the materials which have been reviewed. This is useful both prior to issue and after as a record of what has actually been reviewed in the due diligence process. The underwriters' lawyers may also prepare a due diligence file providing a record of the due diligence investigation conducted in connection with the offering (in case of litigation) and a source of materials for any future transactions by the issuer. The file will generally contain a copy of all document request lists sent to the issuer; a clean copy (no notations) of all documents provided by the issuer for review; and a copy of the due diligence memorandum.

Document request list

This list is a summary of the type of documents that are commonly requested for U.S. style due diligence and is not intended to be exhaustive or conclusive. It is important to note that not all of these documents would be requested for every deal, particularly with more seasoned or frequent issuers.

(i) Corporate books and records: incorporation documents of the issuer and other relevant group companies (guarantors and foreign branch registration documents); minutes of board, shareholder and committee meetings; reports to shareholders and other shareholder documents/ agreements.

(ii) Financial information (for relevant group companies): financial statements (internal reports and audits, and related correspondence); tax returns); indebtedness documents/agreements.

(iii) Employee materials: employment agreements; consulting agreements; union or other employee representation related documents; employee handbooks; schedules of salaried and hourly employees; organisational information (detailed organisation chart, list of all directors and officers).

(iv) Contingent liabilities: litigation; regulatory compliance.

(v) Contracts, agreements and other arrangements: agreements not in ordinary course of business (e.g., joint ventures); key customer contracts; key supply contracts; material agreements relating to product warranties, distributorship, advertising and manufacturing agreements).

(vi) Intellectual property rights: trademarks, licences, patents, copyrights and related agreements; pending litigation; agreements relating to employee/consultancy ownership.

(vii) Plant, property and equipment: real property documents; personal property documents (e.g. leasing agreements); related appraisals/ valuations.

(viii) Insurance.

(ix) Market information: competitor details and analysis of competitive markets; sales volumes; sample customer contracts; list of 10 largest suppliers; research and development plans; correspondence and other documents relating to negotiations with competitors of the company for most recent three to five years, depending on the issuer.

(x) Materials for public companies (if applicable): SEC Filings; forms and proxy statements for most recent three to five years, depending on the issuer; any Securities Act registration statements, including any post-effective amendments; recent written presentations to security analysts; recent security analyst research reports; press releases for most recent three to five years, depending on the issuer.

(xi) Miscellaneous: any shareholder rights agreements; description of subsidiaries, joint ventures, partnerships, etc.; future acquisition or disposition plans; future restructuring plans; company's information management system description, including any future changes planned.

2. Disclosure in the prospectus

The prospectus is the primary legal and marketing document that an issuer uses to solicit investors for a transaction. The prospectus must cover all aspects of a particular transaction, including the overview of the issuer, terms and conditions of the Notes, risk factors, and financial statements.

Compared with Regulation S transactions, Rule 144A transactions commonly entail due diligence to meet a U.S. 10b-5 standard, following SEC-registered practice more closely. As a result, there is commonly a "Management's Discussion & Analysis" section and "Industry Overview" section in the disclosure for 144A offering documents, which is not as common in Regulation S-only transactions.

A Regulation S offering has no legally binding checklist for disclosure; however, for a Chinese issuer, the OM will usually cover the following information:

1. A **summary** with
    a. a business overview;
    b. past 3 years' financial statements (including profit & loss, balance sheet, and cash flow statement); and
    c. summary terms of the Notes.
2. The **business overview** is extracted from the Description of the Issuer section. Financial summary puts the 3-year financials side by side for easy comparison. Summary terms only highlight the key components of the terms and will usually refer to the detailed clause in later section.
3. **Risk factors** that cover:
    a. issuer's business and financial performance;
    b. the industries in which the issuer operates in;
    c. supervision and regulation in relevant jurisdictions; and
    d. the characteristics of the security and its trading markets.

The issuer must disclose any information that may affect investors' decision and the future value of the investment, so that the investors can make an informed decision. While the purpose of disclosing risk factors is to protect issuer from liability against investors, marketing considerations are usually also taken into consideration.

4. **Use of Proceeds** which specify the approximately net proceeds received (after considering the discount of the issue price and deducting fees and expenses) and the use of proceeds.
5. **Capitalisation**, covering the capitalisation situation before the offering (as shown in the latest financial statement included in the OM) and pro-forma (post the offering) to indicate how the particular offering will affect issuer's capital structure.
6. **Terms and Conditions of the Notes**, including interest, payment frequency, calculation base and maturity date.
7. **Covenants**, including:
    a. Financial covenants (though normally in high yield issuances only), negative pledge, change of control put, and/or other material legal provisions;
    b. Events of default; and
    c. Circumstances, if any, under which the notes are callable.
8. **Description of issuer's business**, including, where relevant:
    a. Strengths and strategies;
    b. Business model;
    c. Products and services;
    d. Customers;
    e. Suppliers; and
    f. Corporate structure (including major operating subsidiaries and affiliates).
9. **Supervision and regulation**, with a description of the relevant regulatory environment.
10. **Management**, describing corporate governance and the composition and capability of the management, in particular:
    a. Biographies of directors and officers, and their experience with issuer and within industry;
    b. Board structure and board committees; and
    c. Share ownership and stock option plans for management.
11. **Related-party transactions**, which may or may not benefit the issuer.
12. **Financial situation** ("F-pages"), including the audit report, the full text of the financial statements themselves, and the notes to the financial statements.
13. **Management Discussion and Analysis** (MD&A), which is intended to describe historical and public prospective results through the eyes of management, and provide context to recent financial performance.
14. **Industry**, including information about the market environment and competitive landscape. Data from third-party sources must be obtainable, reputable and citable.

Generally, the U.S. and Chinese systems are "disclosure-based": they place importance on transparency and information for the investor in order to make an informed investment decision. To that end, at the meeting, a high level summary of bond prospectus disclosure was divided into disclosure about:

1. **The business.** The investor needs to know what the business is that he is investing into.

2. **The offering.** The investor needs to know what the financial instrument is that he is investing into, including the terms and conditions of that financial instrument.
3. **The financial information.** In addition to the qualitative description of the business, the investor needs to know what the financial information of the company is in accordance with Regulation S-X. And both the management (see "Management's Discussion and Analysis" below) and the outside audit/accountant work thereon.
4. **The legal and miscellaneous information**. In connection with a bond offering, there are other factors that could be material to an investor's decision to invest or not. Such information I required to be included. For example, disclosure on taxation.

The following is a typical contents page from a 144A transaction:

- Certain Definitions, Conventions and Currency Presentation
- Notice Regarding Presentation of Financial Information
- Forward-Looking Statements
- Enforcement of Civil Liabilities
- Summary
- The Offering
- Summary Consolidated Financial and Operating Data
- Risk Factors
- Use of Proceeds
- Ratio of Earnings to Fixed Charges
- Capitalisation
- Our History and Corporate Structure
- Selected Consolidated Financial and Operating Data
- Management's Discussion and Analysis of Financial Condition and Results of Operations
- Business
- Regulation
- Our Directors
- Our Executive Officers
- Principal Shareholders
- Related Party Transactions
- Description of Material Indebtedness
- Description of the Notes
- Ratings
- Taxation
- Plan of Distribution
- Transfer Restrictions
- Legal Matters
- Independent Registered Public Accounting Firm

- General Information
- Index to Consolidated Financial Statements

Marketing of an international bond offering

The marketing of an international bond offering by a new or infrequent issuer is usually conducted through a global roadshow meeting with international investors. The purpose of the roadshow is to introduce the company's credit highlights, business strategies and recent developments to investors, maximising investors' attention and interest in the proposed offering and guiding investors to purchase the securities at the pricing range set by the joint bookrunners.

Once the message is out, sales staff from the joint bookrunners will contact respective investors, providing them with time slots for meetings and investor luncheons as appropriate. For Reg S transactions, the target investors are usually based in Asia and Europe, so the roadshow locations for Reg S transactions usually include Hong Kong, Singapore and London. For 144A transactions, U.S. QIBs are also targeted so the roadshow team will also visit New York, Boston, and sometimes Los Angeles and San Francisco, in addition to Hong Kong, Singapore, and London.

After investor meetings, the sales teams from the joint bookrunners will follow up with respective investors for feedback. The feedback collected through a roadshow usually serves as an important indication for the joint bookrunners to formulate a pricing view before the book building process starts. With sufficient and constructive investor feedback, the joint bookrunners determine on the "initial price guidance" (which may continue to evolve as the deal progresses) to start the book building process with the issuer's permission.

	Regulation	**144A**
Locations	Hong Kong Singapore London	Hong Kong Singapore London New York Boston Los Angeles (Optional) San Francisco (Optional)
Time	2-3 days roadshow	4-5- days roadshow
Format	1-on-1 meetings Multiple-on-1 meetings Luncheon (Hong Kong and Singapore Only)	1-on-1 meetings Multiple-on-1 meetings Luncheon (Hong Kong and Singapore Only)

3. Book building of an international bond offering

The book building process of an international bond offering is essentially a pricing discovery process between the joint bookrunners and the global investors. The joint bookrunners' objective in the book building process is to achieve the best pricing and sizing target for the issuer, commensurate with the issuer's sizing, pricing, tenor, distribution and ongoing market objectives. The investors' objective in the book building process is to discover and achieve the pricing that meets the investors' risk and return targets.

The book building process usually starts with announcing the initial price guidance ("IPG") or IPTs (initial price thoughts if book not open yet). The IPG is determined based on the feedback collected during the roadshow, market conditions and the secondary trading levels of the comparable notes on the day of book building, and a trade-off between the issuer's pricing and sizing target. In order to generate stronger momentum, IPG given to the market may be "wider" (i.e. higher yield to investors) than the issuer's and joint bookrunners' pricing target. The

purpose is to encourage more investors to participate in the book building process and generate a larger order book.

Once the IPG is announced to the market, the sales team of each joint bookrunner will start to communicate with investors, collecting investors' thoughts on orders and indicative pricing. Investors will then formulate their views on orders based on the IPG and usually they will add a pricing limit to their respective order.

For most Asian targeted USD deals, the book building process starts from Asia then goes to Europe and US (144A deal only). Investors in different locations will provide their respective order and pricing targets to sale teams of joint bookrunners. However, sometimes the book building process could also start from US (for some US targeted 144A / SEC Registered deals) or Europe (some EUR deals) and come back to Asia.

Once the joint bookrunners have collected sufficient orders and have a clearer view on investors' thoughts of pricing, the joint bookrunners will decide and announce Final Price Guidance ("FPG") to the market. The FPG provides a substantially closer guidance to the final pricing. With FPG, investors will leave their final orders and pricing limit to the joint bookrunners, allowing the joint bookrunners to decide and confirm the final price and size of the proposed transaction.

After all investors confirm their orders, the joint bookrunners will start allocating the bonds to investors, according to the issuer's preference and joint bookrunners' understanding of investors (partly based on behaviour in past transactions). "Buy-and-hold" investors are generally preferred over "opportunistic" investors who may immediately sell the notes once the notes start trading in the secondary markets in order to lock in profits.

Below are some general factors that bookrunners will consider when allocating new issues:

- Issuer's specific preference
- Size of an investor's expressed interest (both absolutely and relative to the investor's portfolio or assets under management)
- Investor's historical volume of transactions and trading behavior in past issues generally
- The nature and level of interest shown by the investor in the issuer and the particular offering, for example its involvement in road shows, and the quality and timeliness of feedback
- Timeliness of investor's interest
- Any indication or belief that the investor has exaggerated the true extent of its interest in the expectation of being scaled down
- Category or description into which the investor falls (e.g. mutual fund, banks, hedge fund, trading); and
- Whether the investor had made a reverse inquiry in connection with the issuance and the importance of that investor's participation to that issuance

Allocation should not be determined by the amount of trading, commission or other income received or expected by the firm from business with a particular investor client.

Finally, once all factors are confirmed, the deal would be considered priced. For investment grade transactions, the lead managers would also be required to lock in treasury rates at the time of pricing to determine the final yield of the proposed transaction.

Timetable of the book building process of an international bond offering (for 144A/Regulation S international bonds)

For Asian transactions, pricing usually takes place during early London afternoon (Regulation S) or early New York afternoon (Global/144A). In either case, investors globally are given the opportunity to consider participating in the transaction. Asian local currency transactions are priced during Asian trading hours. Occasionally, Regulation S USD deals are priced in the Asian time zone as well, highlighting the growing importance of the Asian investor base.

Below is a standard 144A transaction timetable:

Time zone			Key work streams
China / HK	**UK[1]**	**NY**	
8:30 a.m.	-	-	• *Go/ No-Go Call with Company* • The company decides IPG
09:00 a.m.	-	-	• Announce IPG to the market
02:30 p.m.	-	-	• joint bookrunners update company on market conditions and order book
03:00 p.m.	08:00 a.m.	-	• London market opens
04:30 p.m.	09:30 a.m.	-	• Asian book building closed subject to any overriding input • joint bookrunners update the company on market conditions and Asian and European investor order book
05:00 p.m.	10:00 a.m.	-	• Announce FPG to the market
06:00 p.m.	11:00 a.m.	-	• Europe book building subject
08:00 p.m.	01:00 p.m.	08:00 a.m.	• US market opens
10:00 p.m.	03:00 p.m.	10:00 a.m.	• US book building subject
10:30 p.m.	03:30 p.m.	10:30 a.m.	• joint bookrunners update the company on market conditions and overall investor order book
11:00 p.m.	04:00 p.m.	11:00 a.m.	• Determine final spread (Investment Grade) / yield (High Yield) and size • Launch the transaction and start investor allocation
11:30 p.m.	04:30 p.m.	11:30 a.m.	• Announce investor allocation results
11:45 p.m.	04:45 p.m.	11:45 a.m.	• Pre-pricing bring-down Due Diligence call
00:00 a.m. (Day 2)	05:00 p.m.	12:00 p.m.	• Pricing[2]
00:15 a.m. (Day 2)	05:15 p.m.	12:15 p.m.	• Finalise offering circular
00:30 a.m. (Day 2)	05:30 p.m.	12:30 p.m.	• Execute and sign the purchase agreement (US practice) • Execute and sign the comfort letters (US practice)
00:45 a.m. (Day 2)	05:45 p.m.	12:45 p.m.	• Finalise the indenture (US practice) Eurobond practice is for docs execution at T+3

Notes:
[1] UK timetable reflects summer times.
[2] The timing of final pricing will be subject to market conditions and book building profile on the pricing date.

B. Practices in the Chinese interbank bond market

1. Due diligence
2. Information disclosure
3. Book building

1. Due diligence

A. Definition of due diligence

Due diligence on debt financing instrument means that relevant intermediaries, on the principle of diligence, performance of responsibility and honesty, adopt various effective methods and steps to fully investigate the issuer. The purpose is to grasp the legal status of the issuer's qualifications, asset ownership, claims and debts and other major matters as well as its business, management and financial status, and make judgment on the issuer's will and capability of repayment, so as to reasonably confirm the authenticity, accuracy and completeness of the registration documents.

With the development of China's bond market and the continuous expansion of the interbank bond market, and according to the *Administrative Rules on Debt Financing Instruments of Non-financial Enterprises* issued by the People's Bank of China (PBC), National Association of Financial Market Institutional Investors (NAFMII) formulated the *Guideline on the Due Diligence on Debt Financing Instruments of Non-financial Enterprises in the Interbank Bond Market* (Guideline on the Due Diligence) and the *Rules on Intermediary Service for Debt Financing Instruments of Non-financial Enterprises in the Interbank Bond Market* (Rules on Intermediary Service) in April 2008 to standardize the due diligence conducted by lead underwriter of debt financing instruments of non-financial enterprises in the interbank bond market on the prospective issuers. The enactment of the above guidelines and rules further clarified the contents, methods, principles and requirements of due diligence and played a positive role in standardizing this work.

B. Effect of due diligence

(i) Effect of due diligence on investors
For investors, due diligence can reduce information asymmetry between investors and the issuer, provide information for investors to identify investment risks, and help them reasonably price the debt financing instruments.

(ii) Effect of due diligence on issuers
Due diligence can help issuers provide more sufficient and reliable information for the market, which is good for faithfully reflecting the issuer's risk level and promoting reasonable pricing of debt financing instruments.

(iii) Effect of due diligence on intermediaries
Due diligence conducted by lead underwriter is the basis and core of the due diligence on debt financing instruments. It provides overall guidance and reference for the due diligence conducted by other intermediaries.

C. Main contents of due diligence

In the Chinese interbank bond market, due diligence on finance and business is carried out by the lead underwriter with assistance from accountants.

Due diligence conducted by lead underwriter is the basis and core of the due diligence on debt financing instruments. It is featured by the largest scope and highest quality requirement compared with due diligence conducted by other intermediaries.

The purpose of due diligence conducted by lead underwriter is to prudently verify the authenticity, accuracy and completeness of the registration documents of debt financing instruments, ensure the quality of information disclosure for the issuance of debt financing instruments, and lay the foundation for offering advice to issuers on the issuance of debt financing instruments. The key meaning of lead underwriter's due diligence is to reduce information asymmetry on debt financing instruments and improve market efficiency. This includes reducing information asymmetry between investors and the issuer, promoting the reasonable pricing of debt financing instruments and lowering the operating cost; reducing information asymmetry between NAFMII and the issuer, improving the efficiency of self-regulation, and lowering the cost of self-discipline; identifying the issuer's investment highlights, urging it to improve the capability of information disclosure and standardized operation, and helping it lower the

financing cost; lowering the regulatory, underwriting and reputational risks faced by lead underwriter; and providing the overall guidance and reference for the due diligence conducted by other intermediaries.

In the Chinese interbank bond market, the lead underwriter assists the issuer in writing the prospectus of debt financing instruments. The issuer's attorneys carry out due diligence and issue the Legal Opinion based on the results, which concerns the following main matters: whether the registration procedures stipulated by NAFMII have been fulfilled for the issuance of debt financing instruments and whether the registration notice issued by NAFMII has been received; whether the issuer has made the legal and valid decision to apply for registration and issuance of debt financing instruments according to its Articles of Association or similar documents; the legality of underwriting arrangements and legal papers, etc.

D. Main stages of due diligence

Due diligence is a special duty of all agencies. Agencies that participate in the issuance of debt financing instruments shall perform their duties and observe professional ethics. They shall abide by the following principles in the process of due diligence: (1) independence; (2) comprehensiveness; (3) objectivity; (4) importance; (5) flexibility; (6) prudence; (7) confidentiality; and (8) cooperation.

Due diligence on debt financing instruments conducted by lead underwriter usually includes preliminary due diligence, comprehensive due diligence and tracking due diligence. Preliminary due diligence refers to the basic investigation conducted by lead underwriter when undertaking the business to judge whether the issuer is qualified to issue debt financing instruments. Comprehensive due diligence refers to the process in which the lead underwriter comprehensively understands the issuer, fully understands its operation, risks and problems, has sufficient reasons to believe it is qualified to issue debt financing instruments, and confirms the authenticity, accuracy and completeness of the registration documents and prospectus. Tracking due diligence refers to that in the duration of debt financing instruments, the leader underwriter has to pay consistent attention to the enterprise's profitability, industrial trend and correction to problems mentioned in the due diligence, and adjust the scheme depending on the correction.

E. Procedures of due diligence

According to NAFMII's existing self-regulatory rules and in reference to market practice, due diligence process mainly includes the following aspects:

(i) Building a team: the investigation team is mainly composed of people from the lead underwriter's headquarters and those from its branches can provide assistance;

(ii) Making work plan and holding project kickoff meeting: the work plan mainly includes objective, scope, approach, time and process of work, division of duty, personnel, etc.;

(iii) Submitting list of due diligence: submitting the list of due diligence is an important step of due diligence. The issuer has to prepare materials according to the list and submit the materials to the due diligence team within the specified time;

(iv) Interview: on the basis of a preliminary analysis of the obtained due diligence materials, an interview outline shall be prepared and submitted to the enterprise in advance. The outline includes doubts about the materials and some questions on which interviews can help better understand corporate information;

(v) Drawing conclusion about due diligence: the lead underwriter shall put together a draft according to the obtained due diligence materials and records of interviews;

(vi) Tracking due diligence: this includes regular tracking due diligence and irregular tracking due diligence.

F. List of files for due diligence

The following list of common files for due diligence is provided for reference only.

(i) Basic corporate materials
(1) Articles of Association; (2) Brief introduction of corporate history and chart of equity structure; (3) Duplicate of business license and certificate of organization code; (4) Organizational structure and descriptions of departmental functions; (5) List of members of the board of directors, board of supervisors and senior executives, and their resume; (6) Age structure and educational background of employees; (7) Qualifications obtained by the company; (8) Certificate of tax payment.

(ii) Business materials
(1) Materials about corporate operation; (2) Work summaries; (3) Materials about future expenditure; (4) Future plans for asset acquisition and sale; (5) Main corporate regulations; (6) Strategic plans and business development plans for the company.

(iii) Financial materials
(1) Audited financial statements in the past three years; (2) Number of cooperative banks, credit line, content and term of credit, unused credit line; (3) Details of guarantee provided by the company and information on important guaranteed enterprises; (4) Affiliates and related-party transactions of the company; (5) Information on the company's restricted assets; (6) Major outbound commitments made by the company; (7) Information on major lawsuits and other major matters concerning the company; (8) Information on major wealth management, investment and derivative transaction conducted by the company; (9) Information on the company's overseas assets; (10) Information on the company's direct debt financing and future financing plans.

(iv) Materials about the industry the company engages in:
(1) Impacts of macro-economic situation on the industry the issuer engages in; (2) Local economic situation; (3) Overview of industrial development and competition (materials about main competitors), materials about industrial cycle, important industrial policies; (4) Materials that can prove the industrial standing of the issuer.

2. Information disclosure

If the issuer adopts public offering or private placement to register debt financing instruments, it shall prepare the registration documents in accordance with the requirements of the appropriate form system. The specific requirements of registration documents and information disclosure are as follows:

i. The Form System for Public Offering

1. The Form System includes the list of registration documents and information disclosure forms.

   The details are as follows:

   1) The list of registration documents lists the written materials that shall be submitted to National Association of Financial Market Institutional Investors (NAFMII) for the registration or filing for the issuance of debt financing instruments.

   2) The contents of the information disclosure forms are the minimum information disclosure requirements of registration documents, including Form M (prospectus disclosure form), Form G (issuance announcement disclosure form), Form J (issuance plan disclosure form), Form C (financial statement disclosure form), Form F (legal opinion disclosure form), Form P (rating report disclosure form), and Form Z (credit enhancement disclosure form). Each form is named by the initials of the phonetic alphabets of the key words of its Chinese name.

The sub-forms of Form M include Form M.1 (the information disclosure form relating to production safety), Form M.2 (the information disclosure form relating to non-standard unqualified audit report), Form M.3 (the information disclosure form relating to related party transaction), Form M.4 (the information disclosure form relating to

restructuring of major assets), and Form M.5 (the information disclosure form relating to credit enhancement). The sub-forms of Form P include Form P.1 (the information disclosure form relating to corporate credit rating report), Form P.2 (the information disclosure form relating to debt rating report), Form P.3 (the information disclosure form relating to the rating of credit enhancement agency) and Form P.4 (the information disclosure form relating to follow-up rating report). The sub-forms of Form Z include Form Z.1 (the information disclosure form relating to the letter of credit enhancement) and the like.

2. The enterprises, the intermediaries providing professional services, and the related personnel shall prepare the registration documents in an order and give professional opinions in accordance with the relevant laws and regulations, normative documents and rules of self-regulation and shall bear legal liability for the registration documents and opinions that they issue.
    1) The accounting firm shall audit the enterprise and issue an audit report in accordance with the relevant provisions.
    2) The accounting firm shall give a definite opinion on the relevant matter in the legal opinion on the basis of adequate due diligence.
    3) The rating agency shall issue the rating report in accordance with the Guiding Opinions of the People's Bank of China for the Management of Credit Rating, the Self-disciplinary Guidelines for Credit Rating Business in the Debt Financing Instrument Market, and other relevant provisions.
    4) The credit enhancement agency shall issue the credit enhancement documents in accordance with the Rules on Self-disciplinary Management of Credit Enhancement Business in China's Interbank Market and other relevant provisions.
    5) The lead underwriter shall fill in the list of registration documents and information disclosure forms in accordance with the requirements of this Notice.
3. The lead underwriter shall fill in the sub-forms based on the actual situation of debt financing instruments; the enterprises and related intermediaries shall further disclose the relevant information in accordance with applicable sub-forms.
4. Where the enterprise prepares the financial statement in accordance with the Accounting Standards for Business Enterprises and the Guidelines on the Application (the "new accounting standards"), it shall fill in Form C. Where the enterprise is in a special industry and prepares the financial statement in accordance with the Enterprise Accounting Rules, the Industrial Enterprise Accounting Rules and other provisions ("the old accounting system"), it shall comply with the relevant accounting standards and systems and can do without filling in Form C.
5. The lead underwriter shall fill in the forms according to the following requirements:
    1) List of registration documents: The name of issuer, term of debt financing instrument, number of issues, and variety shall be filled in on the top of the form of list of registration documents. Where the documents corresponding to "Document type" are available, tick (√) the corresponding places below the "Registration" or "Filing."
    2) Catalog of information disclosure forms: Tick the applicable form (multiple choices) and fill in the form selected based on the different scenarios listed below the "Applicable scope." For example, the enterprise which has a work safety accident and the audit report is non-standard unqualified, it shall tick M.1 and M.2 below the "Options" item in the catalog of Form M and fill in the above forms.
    3) Page: The specific page range of the disclosed part in the document shall be filled in below the "Page" item. For example, the part of "Risk warning and notes" in the prospectus is from page 5 to page 9, fill in "5-9" in the place corresponding to M-2 and below the "Page" item.
    4) Notes: For the inapplicable information or matter that shall be specially explained, explain in the appropriate place below the "Notes" item.
    5) Signed and sealed by the related personnel of the lead underwriter: After confirming that the list of registration documents and information disclosure forms are completely filled in and all relevant

documents are available, the leader of the related department, team leader and related personnel of the lead underwriter shall separately sign or seal the item of "Signed and sealed by the related personnel of the lead underwriter."

6) Signed and sealed by the lead underwriter: The item "Signed and sealed by the lead underwriter" in the list of registration documents shall be stamped with the official seal of the relevant business department of the lead underwriter. The list of registration documents and information disclosure forms shall be stamped with the official seal (cross-page seal) of the relevant business department of the lead underwriter.

ii. List of Registration Documents

(No._____ Issue of_____of_____Company in_____)

No.	Document type	Options		Notes
		Registration	Filing	
Y-1	Registration statement			
	- Attached with the business license			
	- Attached with the Articles of Association and the consistent resolution of the competent authority		—	
	- Attached with the decryption instruction (if any) of the related enterprise			
Y-2	Recommendation letter		—	
Y-3	Prospectus			
Y-4	Issuance announcement			
Y-5	Issuance plan (if any)			
Y-6	Latest issue of financial statement			
	Audited financial statement and accounting statement of the parent company in 20___			
	Audited financial statement and accounting statement of the parent company in 20___		—	
	Audited financial statement and accounting statement of the parent company in 20___		—	
Y-7	Corporate credit rating report (if any)			
	Debt credit rating report			
	Follow-up rating arrangements			

No.	Document type	Options		Notes
		Registration	Filing	
Y-8	Credit enhancement letter (if any)			
	- Attached with the resolution of the competent authority and the relevant internal control system			
	Credit enhancement agreement (if any)			
	Latest issue of accounting report (if any) of the credit enhancement agency			
	Audited financial statement of the credit enhancement agency and accounting statement of the parent company (if any) in 20___			
	Audited financial statement of the credit enhancement agency and accounting statement of the parent company (if any) in 20___		—	
	Audited financial statement of the credit enhancement agency and accounting statement of the parent company (if any) in 20___		—	
	Corporate credit rating report and follow-up rating arrangements (if any) of the credit enhancement agency			
Y-9	Legal opinion			
Y-10	Annexes to the underwriting agreement		—	
Y-11	Agreement on the supervision of sinking fund special account (if any)			
Notes				
Signed and sealed by the related personnel of the lead underwriter		Signed and sealed by the lead underwriter		
Recipient of NAFMII		_____(MM/DD/YYYY)		

Notes:

1. For the filing items, only the most recent year of audited financial statement and the latest issue of financial statement of the company and the credit enhancement agency (if any) need to be submitted.
2. For the SCP items, where the enterprise has disclosed an effective corporate rating report, recent three years of audited financial statements and latest issue of accounting statement in the interbank bond market, it may choose not to submit them again.

iii. Information Disclosure Forms

1. Form M (prospectus disclosure form)
   Table of Contents

Name of form	Applicable scope	Options	Notes
M	Basic corporate information is disclosed.	☐	
M.1	Where the enterprise belongs to a high-risk industry or has a work safety accident as stated in the Regulations on the Reporting, Investigation and Disposition of Work Safety Accidents (Order No. 493 of the State Council) and the Notice of the State Council on further Strengthening the Work Safety Work of the Enterprises (GF [2010] No. 23) in recent three years and the latest issue, it shall further disclose information according to Form M.1. For the high-risk industries, see the regulations by the State Administration of Work Safety.	☐	
M.2	Where the enterprise's audit reports in recent three years have a non-standard unqualified opinion, it shall further disclose information according to Form M.2.	☐	
M.3	Where the enterprise is involved in related party transactions, it shall further disclose information according to Form M.3.	☐	
M.4	Where the enterprise is involved in restructuring of major assets, it shall further disclose information according to Form M.4.	☐	
M.5	Where the debt financing instrument is involved in credit enhancement, the enterprise shall further disclose information according to Form M.5.	☐	

No.	Elements of information	Page	Notes
M-0	**Title page and table of contents**		
M-0-1	The current debt financing instrument has been registered with NAFMII. Nevertheless, registration does not mean NAFMII makes any comment on the investment value of the current debt financing instrument or judge its investment risk in whatever form. Before buying the current debt financing instrument, the investor shall carefully read this prospectus and relevant information disclosure document, independently analyze the authenticity, accuracy, integrity and timeliness of the information disclosure, judge the investment value at its own discretion, and exclusively undertake any subsequent investment risk.		
	The board of directors (or entity assuming the same responsibility) has approved the prospectus, and all directors (or persons assuming the same responsibility) warrant that the prospectus contains no false information, misleading statement or material omission, and bear the joint and several legal liability for the authenticity, accuracy, integrity and timeliness of the prospectus.		
	The leader of the enterprise, the leader supervising the accounting work and the leader of the accounting department warrant the authenticity, accuracy, integrity and timeliness of the financial information contained in the prospectus.		
	Any person shall be considered as willing to accept the provisions of this prospectus regarding various rights and obligations by obtaining and holding the current debt financing instrument through subscription, acceptance of transfer and other legitimate means.		
	The issuer undertakes to perform its obligations in line with laws, regulations and the prospectus, and accept the supervision from investors.		
	The issuer involved in secrets shall present that “this Company warrants that all the information disclosed by this Company for the issuance of the debt financing instrument does not involve national secrets, and this Company shall exclusively undertake any consequence arising out of the public information disclosure.” (if any)		
	The issuer has not incurred any other material events affecting solvency until the signing date of the prospectus, except for the disclosed information.		
M-0-2	The table of contents marks titles of relevant chapters and sections as well as corresponding pages.		
M-1	**Chapter 1 Terms and Definitions**		
M-1-1	Define name abbreviations and special terms that will possibly hinder investors’ understanding and have special meanings.		
M-2	**Chapter 2 Risk Alert and Statement**		
M-2-1	Investment risks – interest rate risk, liquidity risk and solvency risk.		

No.	Elements of information	Page	Notes
M-2-2	Financial risk – Mainly refer to the risk arising out of financial factors such as unreasonable asset structure, liability structure and other financial structures of the issuer; poor liquidity of assets; excessive expansion of debt size; significant increase in capital expenditure in future; uncertain future return from the project; high proportion of restricted assets; high proportion of non-reoccurring profit and loss; big change in fair value of derivatives; high contingent liabilities; and significant change in material accounting subjects.		
	Operating risk – Mainly refer to the risk arising out of changes in the market prospect or operating environment relating to the product or service of the issuer; fluctuation of product supply and demand as well as raw material prices; intensification of competition in the industry; influence of the business cycle or product lifecycle; market saturation or market isolation; excessive dependence on single market; decline of market share; and changes in exchange rate and trade environment for the issuer with a large import and export business size.		
	Management risk – Mainly refer to the risk arising out of the instability of the management level, management system and management policy of the issuer as a result of unsound organizational structure and management system, competition and material related transactions with controlling shareholder and other important related parties, high guarantee amount, large number of subsidiaries, operation across industries, complex internal equity relations, possible change or asset restructuring at important shareholders after issuance and potential work safety accident faced by high-risk industries.		
	Policy risk – Mainly refer to concrete policy-related risk incurred by the issuer as a result of possible changes in laws, regulations and policies of the state, such as the impact on the issuer from changes in the fiscal policy, financial policy, land use policy, industrial policy, industry regulation policy, environmental protection policy, taxation system, business licensing system, foreign exchange system, charge system, international antidumping policy, anti-subsidy or special safeguard measures, and policy differences between countries.		
M-2-3	Specific risk – Other specific risks relating to the current debt financing instrument issue.		
M-3	**Chapter 3 Issuance Articles**		
M-3-1	Major issuance articles – Full name of debt financing instrument, full name of issuer, debt financing balance repayable of issuer, registration notice number, term, face value, issuing price or interest rate pricing method, target investor, underwriting mode, issuance method, issuance date, value date, redemption price, redemption method, redemption date, credit rating agency, credit rating result, redemption article or sellback article (if any), and credit enhancement.		
M-3-2	Issuance arrangement – Book building (tendering) arrangement, distribution arrangement, payment and settlement arrangement, registration and depository arrangement, listing arrangement and others.		

No.	Elements of information	Page	Notes
M-4	**Chapter 4 Use of Funds Raised**		
M-4-1	Purpose of funds raised – Disclose the name of the entity using the funds raised, amount and gap calculation; and if the funds raised are used for a project, it is required to disclose the project information, including basic content, investment amount, availability of proprietary capital and capital, construction plan, current status and approval of land, environmental protection and project initiation (approval documents serve as the reference);		
M-4-2	Warranty – Use the funds for production and operation activities of the issuer complying with the requirements of the laws, regulations and policies of the state, and disclose relevant information in a timely manner before changing the purpose of the funds raised during the duration of the debt financing instrument.		
M-5	**Chapter 5 Enterprise Overview**		
M-5-1	Overview – Registered name, legal representative, registered capital, date of establishment (company registration), company registration number, domicile, postal code, telephone number and fax number.		
M-5-2	Historical evolution – With the succession of major entities as the master line, disclose the establishment, historical evolution and reorganization of the enterprise as well as historical changes in the equity structure; disclose important events representing the progress of the enterprise in different historical periods, including shareholding reform, material capital increase or decrease, merger, separation, bankruptcy restructuring and name change.		
M-5-3	Controlling shareholder and actual controller – Overview and shareholding ratios. The actual controller shall be disclosed to the extent of the final state-owned controlling entity or natural person.		
	If the controlling shareholder or actual controller is a natural person – Disclose his name, brief background and pledge of shares in the issuer, and disclose major investments of the natural person in other enterprises and his relations with other majority shareholders.		
	If the controlling shareholder or actual controller is a legal person – Disclose the name, establishment date, registered principal, principal operation, asset size, revenue and profit of the legal person as well as changes and pledges of enterprise shares held by the legal person.		
M-5-4	Independence – Disclose mutual independence with the controlling shareholder in asset, personnel, organization, finance, business operation and other aspects.		

No.	Elements of information	Page	Notes
M-5-5	Important equity investments – Disclose shareholding ratios in consolidated subsidiaries, and disclose the reason for including subsidiaries with the shareholding ratios below 50% in the scope of consolidation or not including subsidiaries with the shareholding ratios above 50% in the scope of consolidation.		
	Subsidiaries having material influence on the enterprise – Disclose their basic information, principal operations and major financial data (including assets, liabilities, owners' equity, revenue and net profit) over the past year as well as changes in the aforesaid items and reasons.		
	Major companies with equity participation and related parties having important influence on the enterprise – Disclose enterprises with equity participation involving a high proportion in revenue and assets as well as other related parties having material influence on the enterprise in the same way as subsidiaries.		
M-5-6	Governance structure – Governance structure, organizational structure and operation, including major functional departments, businesses or business divisions and branches.		
	Internal control system – Disclose names and core contents of internal control system, including budget management, financial management, material investment/financing decision, guarantee policy, related transaction policy and internal control over assets, personnel and finance of subsidiaries.		
M-5-7	Basic personnel information of enterprise – Disclose staff status, disclose names, positions and terms of directors, supervisors and senior management members, and disclose resumes of senior executives. State whether or not senior executives are arranged in conformity with the Company Law, relevant laws, regulations and the articles of association.		
M-5-8	Business segment – Disclose operating revenue, operating cost, gross profit, gross profit margin and contribution of specific business segment over the past three years and the most recent period.		
	For principal operation contributing over 10% of the revenue from principal operation or contributing over 10% of the gross profit in the most recent year or period, disclose its profiting mode, upstream and downstream industrial chain, production and sales regions, key technical process and industrial position in the past three years and the most recent period. Disclose key indicators that can prove its position and operating advantages in the industry, and state relevant data sources.		
M-5-9	Construction in progress – Take the form of list to disclose names, investment amounts, completed amounts and compliance of major constructions in progress. For the construction in progress delivering a material influence on the production and operation of the enterprise, disclose its basic content, investment amount, construction plan, current status and availability of proprietary fund and capital.		
	Proposed construction – Name, investment amount, investment plan and investment progress of the investment project to be built in future.		
M-5-10	Development strategy – Disclose the development strategy planning in the following 3-5 years.		

No.	Elements of information	Page	Notes
M-5-11	Industry status – For the principal operation contributing over 10% of the revenue from principal operation or contributing over 10% of the gross profit in the most recent year or period, disclose its industry status, industry prospect, industry policy and competitive landscape.		
M-6	**Chapter 6 Major Financial Standings of Enterprise**		
M-6-1	Disclose the audited financial reports over the past three years and the accounting statements for the most recent period as to accounting basis, material accounting policy change, audit status and change in scope of statement consolidation. Disclose the reason for the change in the accounting firm or the scope of statement consolidation, if any.		
	Take the form of list to disclose the balance sheet, income statement and cash flow statement over the past three years and the most recent period, and specify data sources. If the enterprise prepares the consolidated financial statements, the enterprise shall simultaneously disclose the consolidated financial statements and the financial statements of the parent.		
M-6-2	Analysis of material accounting subjects – Disclose the asset-liability structure statement over the past three years and the most recent period. Analyze the change and reason for the change relating to the asset subject contributing over 10% of total assets, or the liability subject contributing over 10% of total liabilities or the accounting subject suffering a change above 30% over the past year and the most recent period.		
	Analysis of important financial indicators – Solvency, profitability, operating efficiency and other financial indicators as well as the reason for their changes, if any, over the past three years and the most recent period.		
M-6-3	Interest-bearing liabilities – Balance, term structure and guarantee structure of interest-bearing liabilities at the end of the most recent year as well as value date, maturity date and financing interest rate of major liability. Issuance of direct debt financing securities during duration (including issuances of the issuer and other consolidated enterprises of group parent).		
M-6-4	Related transaction – If the issuer is involved in related transactions, please refer to Schedule M.3.		
M-6-5	Contingencies – Disclose external guarantees, pending litigations (arbitrations), material commitments and other contingencies in the most recent period.		
M-6-6	Restricted assets – Disclose the mortgage, pledge, lien and other purpose restrictions over assets in the most recent period as well as other priority of debt repayment that can challenge third persons. The disclosure contents include but are not limited to asset names, mortgagee/pledgee, book-entry value of asset and term.		
M-6-7	Derivatives – Disclose names, trading purpose, trading structure, nominal principle and profit/loss of the derivatives held in the most recent period.		
M-6-8	Material investment and wealth management products – Disclose names, trading purpose, trading structure, nominal principle and profit/loss of the material investment and wealth management products held in the most recent period.		
M-6-9	Overseas investment – Disclose the content, amount, plan, current status and relevant operating data of the overseas investment in the most recent period.		
M-6-10	Direct debt financing plan – Disclose the amount, progress and issuance plan relating to the direct debt financing plan.		

No.	Elements of information	Page	Notes
M-7	**Chapter 7 Credit Standing of Enterprise**		
M-7-1	Rating – Disclose the historical entity rating, rating agency and rating conclusion of debt financing in the past three years as well as meanings of rating symbols.		
M-7-2	Credit facility – Line of credit, used line of credit and unused line of credit granted by major loan banks.		
M-7-3	Default record – Amount, time, reason and resolution progress of debt default over the past three years and the most recent period.		
M-7-4	Historical issuance and repayment of direct debt financing instruments.		
M-8	**Chapter 8 Credit Enhancement of Debt Financing Instrument**		
M-8-1	Please refer to Schedule M5 if the debt financing instrument contains credit enhancement.		
M-9	**Chapter 9 Taxes**		
M-9-1	Taxes payable on the investment in debt financing instrument – Taxes, tax basis and payment mode.		
M-9-2	Presentation – The listed tax items do not constitute tax advice or tax basis for investors.		
M-10	**Chapter 10 Information Disclosure Arrangement**		
M-10-1	Information disclosure arrangement – Basis of information disclosure, disclosure time, disclosure content, material event information disclosure, regular information disclosure during duration, principal repayment and interest payment. The disclosure time shall be no later than the time of public disclosure through the stock exchange, designated media or other occasions.		
M-11	**Chapter 11 Investor Protection Mechanism**		
M-11-1	Default event		
M-11-2	Liability for breach		
M-11-3	Investor protection mechanism		
M-11-4	Force majeure		
M-11-5	Abstention		
M-12	**Chapter 12 Issuance-related Institutions**		

No.	Elements of information	Page	Notes
M-12-1	Disclose names, domiciles, legal representatives, telephone numbers and fax numbers of the following institutions as well as names of relevant handling persons:		
	--- Enterprise		
	--- Lead underwriter and other underwriting institutions		
	--- Law firm (if any)		
	--- Accounting firm (accounting firm issuing the audit reports for the past three years)		
	--- Credit rating agency (if any)		
	--- Credit enhancement institution (if any)		
	--- Registration, depository and clearing agency		
	--- Other institutions relating to issuance		
	Relations between enterprise and related institutions – Disclose direct or indirect equity relations and other material interest relations between the enterprise and relevant intermediaries as well as their principals, senior executives and handling persons, and if no such relations, the enterprise shall disclose relevant statement.		
M-13	**Chapter 13 Reference Documents**		
M-13-1	Reference documents – Registration notice, public disclosure document and relevant approval document on the project funded with the funds raised.		
M-13-2	Inquiry address – Enterprise and lead underwriter.		
M-13-3	Website – Websites recognized by NAFMII.		
Remarks			

Main Text
Schedule M.1 (information disclosure schedule involving work safety)

No.	Elements of information	Page	Notes
M.1-1	**Chapter 2 Risk Alert and Statement**		
	In M-2-2, the issuer shall disclose potential risks relating to work safety, and disclose the information on material work safety accidents that have happened.		
M.1-2	**Chapter 5 Enterprise Overview**		
	In M-5-6, the disclosure shall disclose the internal control system and relevant emergency response plan relating to work safety.		
	In M-5-8, the issuer shall disclose concrete measures relating to work safety management and their implementation.		
	In M-5-8, the issuer shall disclose work safety inspection records over the past three years and the most recent period, and if the issuer has incurred a work safety accident, the issuer shall disclose basic information of the accident, determination of relevant state authority for accident reason and nature, relevant remediation requirement for the issuer and subsequent inspection and acceptance.		
Remarks			

Schedule M.2 (information disclosure schedule involving audit report bearing the unmodified unqualified opinion)

No.	Elements of information	Page	Notes
M.2-1	**Title page**		
	In M-0-1, the issuer shall present that "XXX Accounting Firm has issued an audit report with the XXX (audit report type) on the financial report of the Enterprise for XXXX, and we are hereby reminding the investors to carefully read through the audit report and relevant annotations on financial statements. This Enterprise has stated relevant affairs in detail. Please read carefully."		
M.2-2	**Chapter 6 Major Financial Standings of Enterprise**		
	In M-6-1, the issuer shall remind the audit report type is one with the unmodified unqualified opinion, and disclose the extent of impact on the company, concrete measures to eliminate the event and its impact, current implementation status and subsequent measures.		
M.2-3	**Chapter 14 Appendixes**		
	The accounting firm and the issuer shall provide special statement on the event involved in the audit report with the unmodified unqualified opinion respectively. The contents include but are not limited to the basis of the opinion and the extent of impact on the issuer.		
Remarks			

Schedule M.3 (information disclosure schedule involving related transaction)

No.	Elements of information	Page	Notes
M.3-1	**Chapter 2 Risk Alert and Statement**		
	Disclose related transaction risk in M-2-2.		
M.3-2	**Chapter 5 Enterprise Overview**		
	In M-5-6, the issuer shall disclose the contents of the related transaction policy, including without limitation to pricing principle, decision-making procedure and decision-making mechanism.		
M.3-3	**Chapter 6 Major Financial Standings of Enterprise**		
	In M-6-2, the issuer shall further disclose the contents and changes of accounts payable, accounts receivable, other payables, other receivables, cash flow and other subjects relating to operating activities.		
	In M-6-4, the issuer shall disclose related transactions as to overview, reason, pricing basis, settlement mode, impact and fund occupation over the past year.		
Remarks			

Schedule M.4 (information disclosure schedule involving material asset restructuring)

No.	Elements of information	Page	Notes
M.4-1	**Chapter 2 Risk Alert and Statement**		
	In M-2-2, the issuer shall disclose potential risk arising out of the material asset restructuring.		

No.	Elements of information	Page	Notes
M.4-2	**Chapter 5 Enterprise Overview**		
	In M-5-2, the issuer shall disclose the asset restructuring plan, current stage, completed legal procedure, compliance of restructuring process and influence on the qualification as the debt financing instrument issuer and validity of its resolutions.		
M.4-3	**Chapter 6 Major Financial Standings of Enterprise**		
	In M-6-1, the issuer shall disclose comparable financial data over the past three years and the most recent period.		
	In M-6-2, the issuer shall analyze the influence of the restructuring on its production, operation and solvency.		
Remarks			

Schedule M.5 (information disclosure schedule involving credit enhancement)

No.	Elements of information	Page	Notes
M.5-1	**Chapter 2 Risk Alert and Statement**		
	In M-2-3, the issuer shall disclose the specific risk relating to the credit enhancement of the current debt financing instrument.		
M.5-2	**Chapter 8 Credit Enhancement of Debt Financing Instrument**		
	In M-8-1, the issuer shall disclose relevant institution information – If the credit enhancement is provided by a professional credit enhancement institution, the issuer shall disclose the information in line with the Self-regulatory Management Rules of China Interbank Market Concerning Credit Enhancement Business, and if the credit enhancement is provided by other enterprises, the issuer shall disclose the information on these enterprises in the same way as the issuer.		
	In M-8-1, the issuer shall disclose the contents of the L/G or the guarantee agreement, including guarantee amount, guarantee term, guarantee method, guarantee scope; rights and obligations of the enterprise, guarantors and holders of the debt financing instrument; and other matters that all parties consider shall be agreed upon.		
	In M-8-1, the issuer shall disclose the name of the collateral, the amount of the collateral (book-entry value and appraised value) and the ratio of the amount to the total face value and total principal and interest of the issued debt financing instrument as well as the completion of the collateral appraisal, registration, preservation and relevant legal procedures. (if any)		
	In M-8-1, the issuer shall disclose the continuous disclosure arrangement in case of material changes, if any, in the credit standing of the guarantor or collateral.		
M.5-3	**Chapter 13 Reference Documents**		
	In M-13-1, the issuer shall disclose relevant certificate documents (if any) as reference documents – If the mortgage/pledge guarantee is adopted, the issuer shall provide the proprietorship certificate of the mortgaged/pledged property, asset appraisal report and documents relating to the registration, preservation and continuous monitoring arrangement for the mortgage/pledge.		
Remarks			

II. Private Placement Form System

i. Direction for Use

1. Registration Document Form System for Private Placement of Debt Financing Instruments
   The Registration Document Form System for Private Placement of Debt Financing Instruments (hereinafter referred to as the "Form System") contains the list of registration documents and information element forms. The details are as follows:

   1) The list of registration documents lists the written materials that shall be submitted to National Association of Financial Market Institutional Investors (NAFMII) for the registration for and private placement of debt financing instruments.

   2) The contents of the information element form is the minimum requirements of information elements of the registration document, including Form DX (private placement agreement form), DX.Z (private placement agreement element form relating to credit enhancement), DQ (confirmation letter from the investor of private placement note), and Form DF (legal opinion on the private placement note).

   3) Form DX in Annex 5 shall be filled in and stamped by the issuer as a confirmation at the current issuance and be reported to the NAFMII for filing after the issuance. The attorney shall give a legal opinion on the contents of Form DX in Annex 5, which shall be reported to NAFMII together with Annex 5 for filing after the issuance.

2. The enterprises, the intermediaries providing professional services, and the related personnel shall prepare the registration documents in an order and give professional opinions in accordance with the relevant laws and regulations, normative documents and rules of self-regulation and shall bear legal liability for the registration documents and opinions that they issue.

   1) The accounting firm shall audit the enterprise and issue an audit report in accordance with the relevant provisions.

   2) The accounting firm shall give a definite opinion on the relevant matter in the legal opinion on the basis of adequate due diligence.

   3) The lead underwriter shall fill in the list of registration documents and information element forms in accordance with the requirements of this Notice.

   4) The lead underwriter shall fill in the forms according to the following requirements:

      a) List of registration documents: The name of issuer and variety shall be filled in on the top of the form of list of registration documents. Where the documents corresponding to "Document type" are all available, tick (√) the corresponding places below the "Options" item.

      b. Page: The specific page range of the disclosed part in the document shall be filled in below the "Page" item.

      c. Notes: For the inapplicable information elements or matters that shall be specially explained, describe in the appropriate place below the "Notes" item.

      d. Signed and sealed by the related personnel of the lead underwriter: After confirming that the list of registration documents and information element forms are completely filled in and all relevant documents are available, the leader of the related department, team leader and related personnel of the lead underwriter shall separately sign or seal the item of "Signed and sealed by the related personnel of the lead underwriter."

      e. Signed and sealed by the lead underwriter: The item "Signed and sealed by the lead underwriter" in the list of registration documents shall be stamped with the official seal of the relevant business department of the lead underwriter. The list of registration documents and information element forms shall be stamped with the official seal (cross-page seal) of the relevant business department of the lead underwriter.

ii. List of Registration Documents

(Documents for the Registration of _____of_____ Company)

No.	Document type	Options	Notes
DY-1	Registration statement	☐	
	- Attached with the business license	☐	
	- Attached with the Articles of Association and the consistent resolution of the competent authority	☐	
	- Attached with the decryption instruction (if any) of the related enterprise	☐	
DY-2	Recommendation letter	☐	
DY-3	Private placement agreement	☐	
	- Attached with the investment risk warning	☐	
	- Attached with the basic situation of the issuer	☐	
	- Attached with the list of investors and their basic information	☐	
	- Attached with the basic situation of the credit enhancement agency (if any)	☐	
	- Terms and conditions of private placement of debt financing instruments	☐	
DY-4	Confirmation letter from the investor of private placement note	☐	
DY-5	The most recent year of audited financial statement and the accounting statement of the parent company (if any)	☐	
DY-6	Credit enhancement letter (if any)	☐	
	- Attached with the resolution of the competent authority and the relevant internal control system (if any)	☐	
	- The most recent year of audited financial statement of the credit enhancement agency and the accounting statement of the parent company (if any)	☐	
DY-7	Legal opinion	☐	
DY-8	Underwriting agreement	☐	
DY-9	Others (if any)	☐	
Notes			
Signed and sealed by the related personnel of the lead underwriter	**Signed and sealed by the lead underwriter**		
Recipient of NAFMII	**_____(MM/DD/YYYY)**		

Notes:

1. The registration statement shall be filled in according to the client "Filling Instructions"; the basic information filled in shall be consistent with the private placement agreement.
2. The reference for rules in the recommended letter shall be accurate and the use of the capital raised shall be declared legal and compliant; the information in the recommended letter shall be consistent with that in the registration statement, private placement agreement and the like.
3. The audit report shall contain the signature and seal of the accounting firm and at least two certified public accountants; the financial statement shall be stamped with the official seal of the company and be signed or stamped by the legal representative, the company's leader responsible for the accounting work, and the leader of the company's accounting department (accounting manager); the issuer and the accounting firm shall issue a special instruction for the non-standard audit report.
4. Where the Private Placement Agreement (for reference) is used, please describe in the Notes.

iii. Information Element Forms

1. Form DX (private placement agreement element form)

No.	Elements of information	Page	Notes
DX-0	Contents and title page		
DX-0-1	The titles of the chapters and sections and the corresponding page numbers are indicated in the contents.		
DX-0-2	The date and manner of signing of the agreement and contact information.		
DX-0-3	The issuer is a non-financial corporate entity duly incorporated and validly existing under the laws and plans to issue a debt financing instrument in the manner of private placement.		
	The issuer has hired_____ as the lead underwriter, _____ as the joint lead underwriter (if any), and _____ as the book-running manager (if any).		
	The investor has the strength and willingness of investment in private placement note, fully understands the nature of the debt financing instrument issued by the issuer and the risks relating to the subscription or transfer, and is willing to accept the self-disciplinary management by NAFMII.		
	After friendly consultations, the parties to this Agreement reached the following agreement on the relevant matters regarding the issuance and purchase of private placement note in the principles of honesty, trustworthiness, equality, mutual benefit, and real intention.		
DX-1	**Article 1 Issuance and Purchase of Private Placement Note**		
DX-1-1	The registered amount is specified.		
DX-1-2	The issuer will determine the name of private placement note, amount, duration, price, or the manner to determine interest rate and other terms and conditions before each issuance and notify the private investor.		
DX-1-3	The investor is willing to participate in the issuer's any issuance of private placement note within the aforementioned registered amount and is entitled to decide whether to submit an application for subscription based on the terms and conditions of the current private placement note.		
DX-2	**Article 2 Use of the Capital Raised**		
DX-2-1	Pledge - The issuer pledges that the use of the capital raised by private placement note is compliant with national laws, regulations and policies, as well as the use agreed on. The issuer will disclose the specific use of the capital raised to the private investor before the issuance.		
DX-2-2	Where the use of the capital raised is changed over the duration of current private placement note, the post-change use of the capital raised shall be consistent with national laws, regulations and policies, and the issuer shall obtain the consent of the investor before the change of use of the capital raised. The procedure that shall be performed for the change of use of the capital raised shall be agreed on.		
DX-2-3	The use of the capital raised might be re-disclosed at the current issuance in Annex 5.		
DX-3	**Article 3 Information Disclosure**		
DX-3-1	Manner of information disclosure - the manner agreed on.		

No.	Elements of information	Page	Notes
DX-3-2	Disclosure of issuance progress - The issuer shall disclose the amount, duration, interest rate and other related information of the current private placement note to the investor on the next working day after the registration of credit and debt of private placement note.		
DX-3-3	Regular information disclosure over the duration - The regular disclosure of financial statement and others of the issuer is agreed on over the duration of the current private placement note.		
DX-3-4	Disclosure of major events - The standard of a major event, manner of disclosure, disclosure time and others are agreed on.		
DX-3-5	Disclosure of interest payment - The issuer shall disclose the payment of principal and interest of private placement note five working days ahead.		
X-4	**Article 4 Protection of Investor**		
DX-4-1	Definition of default. In case that the event occurs as agreed over the duration of private placement note, the investor is entitled to convene meetings of private placement note holders or take other measures as agreed. The convening, holding, voting procedure and resolution of the holder meetings can be carried out according to the relevant provisions on self-disciplinary management of NAFMII.		
DX-4-2	The disputes over the validity and implementation of the resolution of the holder meeting or the protective measures agreed on shall be resolved according to the agreement.		
DX-4-3	The default coping mechanism shall be established. For instance, the lead underwriter represents the investor to take judicial proceedings relating to breach of contract.		
DX-5	**Article 5 Rights and Obligations of the Issuer**		
DX-5-1	Rights - The issuer has the right to use the capital raised by private placement note as agreed according to law.		
DX-5-2	Obligations - The issuer shall manage and use the capital raised in the principles of honesty, faith and diligence as provided in this Agreement. Where the issuer intends to change the use of the capital raised, it shall fulfill the necessary procedure as provided in this Agreement.		
	The issuer shall repay the principal and interest to the investor holding the private placement note as agreed and fulfill other obligations under this Agreement.		
	The issuer shall accept the supervision by the investor and provide compensations as agreed in the event of breach provided in this Agreement.		
	The issuer shall fulfill the obligation of true, accurate, complete, timely and fair disclosure of information in accordance with the self-regulation rules of NAFMII and this Agreement. Any false records, misleading statements or material omissions are not allowed.		
DX-6	**Article 6 Rights and Obligations of the Investor**		
DX-6-1	Rights - The investor has the right to decide whether to transfer the private placement note it subscribes; it may exert its right over the private placement note in a timely manner in accordance with the laws and regulations or this Agreement, when it finds any matters detrimental to the interests of the issuer.		
DX-6-2	Obligations - The investor has the qualification to subscribe for the private placement note.		

No.	Elements of information	Page	Notes
	The investor has obtained all the authorization and approval of participation in the issuance of the private placement note.		
	The investor unconditionally agrees the issuer to arrange other agencies in line with the qualifications for private investor to sign this Agreement after the signing of this Agreement and grant them the right to subscribe for the private placement note.		
	NAFMII's self-management of the private investor.		
	Where the address, fax number and other information have changed, the investor shall promptly notify the issuer and the lead underwriter.		
DX-7	**Article 7 Confidentiality Obligations**		
DX-7-1	The confidentiality obligations of the issuer and the investor, confidentiality clauses and applicable conditions are agreed on.		
DX-8	**Article 8 Modification**		
DX-8-1	Where the parties to the agreement reach a consensus, the agreement can be effectively modified. The procedure for the modification of the agreement is agreed on.		
DX-9	**Article 9 Termination of Issuance of Private Placement Note**		
DX-9-1	The conditions of termination of issuance and the rights of the related parties are agreed on.		
DX-10	**Article 10 Credit Enhancement Arrangements (if any)**		
DX-11	**Article 11 Settlement of Disputes**		
DX-11-1	This Agreement shall be governed by and construed in accordance with the laws (excluding conflict of laws) of the People's Republic of China (excluding Hong Kong SAR, Macao SAR and Taiwan for the purposes of this Agreement).		
DX-11-2	The resolution of disputes is agreed on.		
DX-11-3	The settlement of the dispute over any provision under this Agreement shall in no way affect the validity and enforceability of any other provision hereof.		
DX-12	**Article 12 Commencement and Termination of the Agreement**		
DX-12-1	All the parties have taken all necessary internal actions to obtain authority to enter into and perform this Agreement. The representatives who sign this Agreement have been duly authorized to sign this Agreement. And all the parties are bound by this Agreement. This Agreement shall be signed by the legal representative or authorized agent and be stamped with the official seal or contract seal of each party.		
	The private placement note under this Agreement has been registered with NAFMII.		
DX-12-2	For the expiration date of this Agreement, the termination of all the rights and obligations of the parties under this Agreement shall prevail.		
DX-12-3	For any matters not contained in this Agreement, a supplementary agreement in writing shall be separately entered into. Where the supplementary agreement is inconsistent with this Agreement, the supplementary agreement shall prevail.		
DX-12-4	The annexes to this Agreement constitute an integral part of this Agreement.		
DX-12-5	The number of copies of this Agreement is agreed on.		

No.	Elements of information	Page	Notes
DX-Annex 1	**Annex 1: Investment Risk Warning**		
DX-Annex 1.1	The risks relating to the issuance of private placement note and the risks relating to the issuer.		
DX-Annex 2	**Annex 2: Basic Situation of the Issuer**		
DX-Annex 2.1	The basic situation of the issuer, the compliance with relevant national laws, regulations and policies, the rating agreement (whether to carry out rating and make rating arrangements shall be determined after consultations), the direct debt financing and financing plan of the issuer, and other matters that the issuer shall specify.		
DX-Annex 3	**Annex 3: List of Private Investors and their Basic Situation**		
DX-Annex 3.1	Company name, legal representative (or legally authorized representative), address, telephone number, fax phone, contacts, e-mail, and postal code.		
DX-Annex 4	**Annex 4: Basic Situation of the Credit Enhancement Agency (if any)**		
DX-Annex 4.1	The basic situation of the credit enhancement agency and other matters that shall be specified.		
DX-Annex 5	**Annex 5: Terms and Conditions of Private Placement of Debt Financing Instruments**		
DX-Annex 5.1	The current private placement note is a real-name book-entry bond. Its custody, payment and transaction shall be carried out in accordance with the self-regulation rules of NAFMII and the relevant regulations of Shanghai Clearing House and the CFETS. The transaction, circulation and other disposal manners of the current private placement note are only limited to the private investors. The private placement note cannot be sold to other institutions or individuals. The lead underwriter shall be responsible for the organization and coordination for the issuance of the current private placement note.		
DX-Annex 5.2	The name of issuer, name of private placement note, registered amount, registration notice number, amount of the current private placement note, duration, face value, issue price or manner to determine the interest rate, issue object and scope of circulation, underwriting manner, issuance manner, payment price, payment manner, credit rating and follow-up rating arrangements (if any), credit enhancement of the current private placement note (if any), issue arrangements, and others.		
DX-Annex 5.3	The use of the capital raised. The use of the capital raised is compliant with national laws, regulations and policies.		
DX-Annex 5.4	The signature and seal of the issuer and the date.		

2. Form DX.Z (private placement agreement element form relating to credit enhancement)

No.	Elements of information	Page	Notes
DX.Z-1	Article 10 Credit Enhancement Arrangements		
	The content of the letter of credit enhancement is disclosed in DX-10.		
DX.Z-2	Annex 1 Risk Warning and Notes		
	Special risks, i.e. the special risks relating to the credit enhancement of the current private placement note, are disclosed in DX- Annex 1.		
DX.Z-3	Annex 4 Basic Situation of the Credit Enhancement Agency		
	The situation and its information disclosure arrangements of the credit enhancement agency are disclosed in DX- Annex 4. Where the credit enhancement is provided by a professional credit enhancement institution, the information shall be disclosed in accordance with the Rules on Self-disciplinary Management of Credit Enhancement Business in China's Interbank Market. Where the credit enhancement is provided by other enterprises, the information shall be disclosed based on the situation of the issuer.		
DX.Z-4	Regional Optimized Financing Mode (if any)		
	Article 5 Rights and Obligations of the Issuer		
	The obligation of repaying the principal and interest that any joint issuer shall bear within its issue amount is disclosed in DX-5. The joint issuer's participation in the issuance of the current regional optimized collective note does not constitute the fulfillment, pledge or guarantee of the obligation of repaying the principal and interest of other issuers.		
	Article 10 Credit Enhancement of Private Placement Note		
	The basic situation of regional optimized financing mode is disclosed in DX-10.		
Notes			

3. Form DQ (Confirmation letter from the private placement note investor)

Confirmation Letter from the Private Placement Note Investor

(Sample)

National Association of Financial Market Institutional Investors:

We hereby confirm the following matters:

I. We are willing to invest in the _____ (full name of the current private placement note) that _____ (name of the issuer) plans to issue.

II. We understand the risks of investment in the private placement note and are able and willing to bear the risks of investment in the private placement note.

III. We are willing to accept the self-disciplinary management by NAFMII and fulfill the obligations of membership.

_____ (Name of investor)

Signed and sealed by:

_____ (MM/DD/YYYY)

4. Form DF (legal opinion information element form)

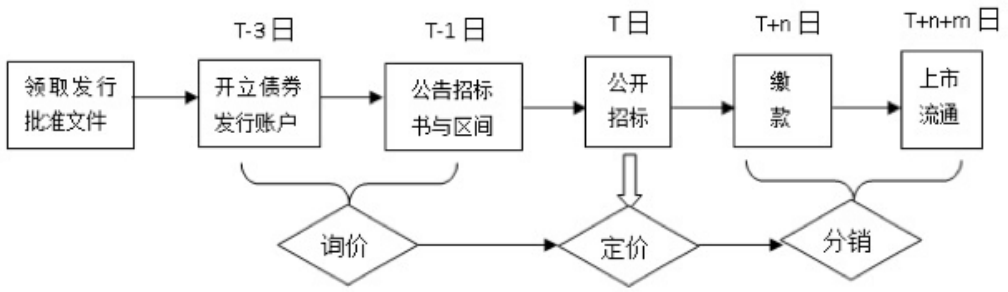
No.	Elements of information	Page	Notes
DF-0	**Matters that shall be declared**		
DF-0-1	The legal opinion is given according to the Company Law of the People's Republic of China, Administrative Measures for Debt Financing Instruments of Non-Financial Enterprises in the Inter-bank Bond Market (Order No.1 [2008] of the People's Bank of China), other laws, regulations and norms, the rules and guidelines of NAFMII, the business standards, ethics and the spirit of diligence generally accepted in the attorney industry.		
DF-0-2	Pledge that the legal opinion is given in accordance with the fact that has occurred or existed before the issuance of the legal opinion, China's existing laws, regulations, rules and guidelines, that the statutory duties have already been strictly performed, that adequate due diligence regarding the legal compliance of the registration and issuance of private placement note has been conducted, and that the legal opinion is ensured not to have false records, misleading statements or material omissions.		
DF-0-3	Agree to deem the legal opinion as a necessary legal document for the registration of private placement note, submit the legal opinion along with other materials, and bear the corresponding legal responsibility.		
DF-0-4	Other appropriate statements can be made, but the disclaimer in violation of the business standards, ethics and the spirit of diligence generally accepted in the attorney industry shall not be made.		
DF-1	**I. Issuer**		
DF-1-1	Does the issuer have legal status?		
DF-1-2	Is the issuer a non-financial enterprise?		
DF-1-3	Is the issuer a member of NAFMII?		
DF-1-4	Is the evolution of the issuer legal and compliant?		
DF-1-5	Is the issuer duly incorporated and in valid existence? Namely, is there any situation indicating the issuer should be terminated, according to the laws, regulations, normative documents and articles of association?		
DF-2	**II. Procedures for the Issuance**		
DF-2-1	Internal resolution - Has the competent authorities made a decision to issue the debt financing instrument according to a legal procedure? Are the decision content and procedure legal and compliant? Where the decision-making authorities is authorized to acquire the decision-making power, the attorney shall confirm whether the scope of authorization and procedure are legal and compliant.		
DF-3	**III. Documents and Relevant Agencies relating to the Issuance**		
DF-3-1	Private placement agreement: Is the private placement agreement legal and valid?		
DF-3-2	Legal opinion - Do the law firm and attorneys that issue the legal opinion have the relevant qualifications? Do they have any associations with the issuer?		
DF-3-3	Audit report - Do the accounting firm that issues the audit report and the certified public accountants have the relevant qualifications? Do they have any associations with the issuer?		
DF-3-4	Does the lead underwriter have the relevant qualifications? Does it have any associations with the issuer?		

No.	Elements of information	Page	Notes
DF-3-5	Rating report (if any) - Does the rating agency have the relevant qualifications? Does it have any associations with the issuer?		
DF-4	**IV. Significant Legal Issues and Potential Legal Risks relating to the Current Issuance**		
DF-4-1	Business operations - Are the business scope and business legal, compliant and in line with national policies? Was the issuer seriously punished due to work safety, environmental protection, product quality, tax and others in the last three years? Is the financing restricted due to the above business operations and other reasons? The verification of subject scope covers the issuer and its subsidiaries within the scope of merger.		
DF-4-2	Credit enhancement conditions (if any) - Are the qualification of the credit enhancement agency and the credit enhancement resolution legal and valid? Is the credit enhancement agreement or letter of credit enhancement is legal and valid? Did the debt financing instrument thereby obtain legitimate credit enhancement?		
DF-4-3	Other issues that shall be specified - Even if this form fails to make an explicit requirement, the attorney shall give a legal opinion on the significant legal issues and potential legal risks relating to the registration and issuance. Where the legal validity of the registration document might be affected due to inconsistent name, delayed signing time and others, the attorney shall give a legal opinion on the cause and the compliance of the document.		
DF-5	**V. General Concluding Observations**		
DF-5-1	The attorney shall make general concluding observations about whether the issuer's registration and issuance of private placement note are legal, compliant, and in line with the rules and guidelines and whether there are potential legal risks.		
DF-6	The Observations shall be signed and sealed by at least two attorneys and be stamped with the official seal of the law firm. The signature shall be dated.		
Notes			

3. Book building

1.1 Flowchart of issuance

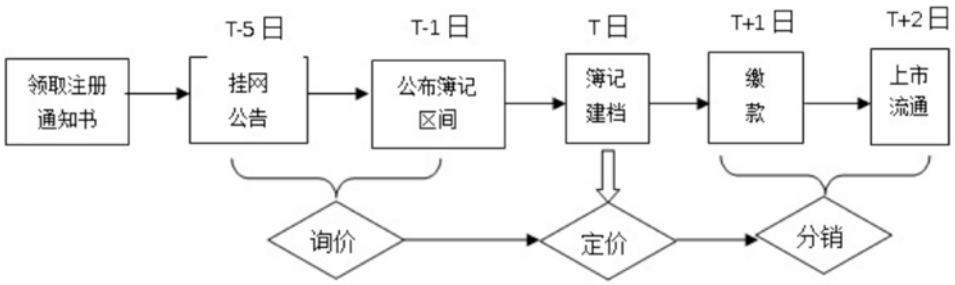
1.1.1 Flowchart of issuance by tender



	T-3	T-1	T	T+n	T+n+m
Receiving issuance approval documents	Opening bond issuance account	Publishing invitation for bid and price range	Open tendering	Payment	Open market trading

Inquiry Pricing Distribution

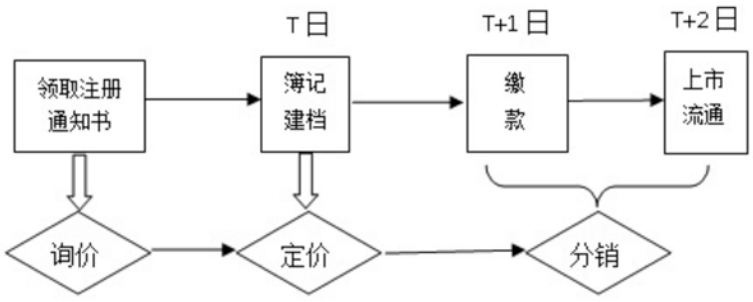
1.1.2 Flowchart of issuance by book building



	T-5	T-1	T	T+1	T+2
Receiving registration notice	Online announcement	Publishing booking range	Book building	Payment	Open market trading

Inquiry Pricing Distribution

1.1.3 Flowchart of issuance by private placement



	T	T+1	T+2
Receiving registration notice	Book building	Payment	Open market trading

Inquiry Pricing Distribution

1.2 Procedures of issuance by tender

1.2.1 Signing service agreement

The issuer shall sign a written agreement with every bidder to standardize and clarify each party's rights and obligations.

1.2.2 Submitting issuance materials

The issuer applies to PBC's Financial Market Department for issuance by tender and submits the following materials: document issued by competent authorities that approves the issuance of current bond, issuing method and invitation for bid of current bond, list of bidders and their written agreement with the issuer, catalogue of files to be disclosed.

1.2.3 Material review and feedback

The Financial Market Department will review the issuer's application for issuance by tender. If the issuer meets relevant conditions, Financial Market Department shall notify within two workdays China Government Securities Depository Trust & Clearing Co. Ltd. (CDC) to prepare for the issuance of the current bonds. CDB shall make overall arrangements for the bond issuance of all types of issuers and notify them in a timely manner.

1.2.4 Disclosure of tendering information

In addition to fulfilling the obligation of information disclosure to investors according to relevant rules, the issuer, before the issuance by tender, shall disclose the following information on www.chinabond.com.cn at least one workday in advance: issuing method and invitation for bid of current bond and list of bidders.

1.2.5 Publishing tendering results

After the issuance is completed, the issuer shall publish the tendering results of all current bonds on www.chinabond.com.cn within one workday, including actual amount of bids, number of bidders, number of bid winners and winning rate. CDB shall submit the bidding/tendering status of all current bonds to PBC's Financial Market Department after bidding is completed, including tendering results and details of bidders and winning bidders.

1.3 Procedures of issuance by book building

1.3.1 Signing service agreement and opening escrow account

If the issuer entrusts Shanghai Clearing House to provide relevant services for the first time, it shall first open a bond issuance account at Shanghai Clearing House.

1.3.2 Arranging issue time

The issuer can issue debt financing instruments in instalments within the registration term. The first issue shall be completed within two months after registration, the failure of which shall be put on record with NAFMII. The issuer shall choose the best issue time within the specified period and based on overall considerations for its own financing needs, situation of the bond market and other factors. Issuing documents of the first issue of debt financing instruments shall be published at least five workdays prior to the issue date, and issuing documents of subsequent issues shall be published at least three workdays prior to the issue date. For issuance by book building, the issuing scheme shall be finalized and submitted for record at least three workdays prior to the issue announcement date. After the announcement period, members of the underwriting syndicate will need one to two workdays to distribute the bonds. Therefore, when determining the best issue time, issuers usually need to leave six to seven workdays for announcement and distribution for the first issue, and four to five workdays for subsequent issues.

1.3.3 Submitting issuing scheme for filing

The issuer and lead underwriter shall formulate the Issuing Scheme and submit it to NAFMII for filing at least three workdays before publishing the issuing documents. The Issuing Scheme shall be disclosed to the market as part of the issuing documents.

1.3.4 Disclosing issuing documents

Enterprises shall publish the current issuing document on the designated information disclosure platform of the

interbank market. In addition to disclosing information in the interbank bond market according to NAFMII's *Rules for Information Disclosure on Debt Financing Instruments of Non-financial Enterprises in the Interbank Bond Market*, enterprises that issue medium term notes shall also make one-off disclosure of the complete issuing plan on the announcement date of the first issue on the interbank bond market.

1.3.5 Inquiry and book building

(1) Determining rate range
After the issuing materials are published, the issuer and lead underwriter shall determine the issuing rate range according to the issuer's qualifications and in reference to market rate and inquiry, and sign the letter of confirmation of book building rate (price) range.

(2) Publishing and sending purchase offer
A day before issuance, the lead underwriter shall send the purchase specifications to members of the underwriting syndicate and publish the purchase specifications to the market. Purchase specifications include the following main contents: important notice of purchasing current bonds, main terms of current bonds, purchase rate range of current bonds, purchase time and procedures, placement and payment of current bonds, contact information of bookrunner, designated account of payment, etc.

1.3.6 Placement and payment

For issuance by book building, subscribers shall submit the stamped written purchase offer to the bookrunner at the specified time. Underwriting commitment of any form, if not made at the specified time, shall be deemed invalid. Bookrunner shall send "demand note" to underwriters that have obtained placement at the agreed time on the issue date to notify them of the amount of placement of current debt financing instruments and the issuing rate determined by book building.

1.3.7 Distribution and open market trading

Bookrunner shall set a distribution period according to the distribution needs of debt financing instruments and arrange members of the underwriting syndicate to carry out agreed distribution. The distribution period lasts from the date of book building to the last day of payment. All placements from members of the underwriting syndicate to institutions not in the underwriting syndicate shall be completed within this period in the form of agreed distribution. The bonds are tradable on the interbank market from the next workday of payment.

1.4 Procedures of issuance by private placement

1.4.1 Signing agreement of private placement and investor confirmation letter

In the stage of inquiry, book runner and potential investors sign the agreement of private placement and investor confirmation letter to clarify each party's rights and obligations. Investors who have signed such documents can only purchase and carry out trading at the time of private placement.

1.4.2 Starting issuance

According to the trend of bond market and the inquiry of current private placement, the bookrunner will flexibly determine the time window of issuance. Unlike public issuance, private placement does not have to make an online announcement. A day before issuance, the bookrunner shall send the purchase specifications to investors that have signed the private placement agreement and investor confirmation letter. Purchase specifications include the following main contents: important notice of purchasing current bonds, main terms of current bonds, purchase rate range of current bonds, purchase time and procedures, placement and payment of current bonds, contact information of bookrunner, designated account of payment, etc.

1.4.2 Book building, payment and distribution

The process of book building, payment and distribution for private placement is the same as that for the public issuance of debt financing instruments. For private placement, no public inducement or disguised form of public issuance shall be employed. Parties of private placement and related staff shall not engage in or assist in the transfer of illicit interests during private placement.

About

International Capital Market Association (ICMA)

ICMA is the trade association for the international capital market with almost 500 member firms from 57 countries, including banks, issuers, asset managers, infrastructure providers and law firms. It performs a crucial central role in the market by providing industry-driven standards and recommendations for issuance, trading and settlement in international fixed income and related instruments. ICMA liaises closely with regulatory and governmental authorities, both at the national and supranational level, to ensure that financial regulation promotes the efficiency and cost effectiveness of the capital market.

www.icmagroup.org

National Association of Financial Market Institutional Investors (NAFMII)

NAFMII was founded on September 3, 2007, under the approval of the State Council of China. NAFMII aims to propel the development of China OTC financial market, which is composed of interbank bond market, inter-bank lending market, foreign exchange market, commercial paper market and gold market.

As a self-regulation organization (SRO) in China, the membership of NAFMII includes policy banks, commercial banks, credit cooperative banks, insurance companies, securities houses, fund management companies, trust and investment companies, finance companies affiliated with corporations, credit rating agencies, accounting firms and companies in non-financial sectors.

www.nafmii.org.cn

ICMA would like to acknowledge the contribution of the following banks:
HSBC, Standard Chartered, Deutsche Bank, JP Morgan, Citigroup