FICC Markets Standards Board (FMSB)
125 Old Broad Street
London EC2N 1AR
United Kingdom

(*Submitted by e-mail to secretariat@fmsb.com*)

16 March 2021

Dear Sir/Madam,

ICMA comments on FMSB Transparency Draft – *Standard for the sharing of investor allocation information in the fixed income primary markets*

The International Capital Market Association (ICMA) sets out its comments on the above draft standard in the annexes to this letter.

Representing a broad range of capital market interests including banks, asset managers, exchanges, central banks, law firms and other professional advisers, ICMA's market conventions and standards have been the pillars of the international debt market for almost 50 years. See: www.icmagroup.org.

This response is primarily drafted on behalf of ICMA's primary market constituency comprised of underwriters that lead-manage cross-border syndicated bond issuance transactions throughout Europe and beyond. This constituency deliberates principally through:

- the ICMA Primary Market Practices Committee, which gathers the heads / senior members of such lead-managers' syndicate desks; and
- the ICMA Legal and Documentation Committee, which gathers the heads / senior members of such lead-managers' legal documentation / transaction management teams.

ICMA would be pleased to discuss its comments at FMSB's convenience.

Yours faithfully,

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Annex 1 – General comments

General

1. **Legal liability arising from FMSB standards** – The draft standard states that *"FMSB Standards […] do not impose legal or regulatory obligations on FMSB members"* (I.3). This is a helpful indication of FMSB intention, but whether this is actually so in practice (e.g., in terms of civil liability in tort) is a question of law and not within FMSB's gift.

Scope

2. **Sharing after 'day of pricing'** – The draft standard sets out certain expected behaviours of syndicate banks relating to the sharing of investor allocation information for new issuances in fixed income primary markets *"on the day of pricing"* (II.1 #2). This might help the draft standard distinguish other appropriate internal information flows from the draft standard's focus, namely the bulk internal sharing of allocation data with trading desks to facilitate market making / hedging (IV.2 #4). It is however worth noting that in a few cases such bulk sharing might occur after the day of pricing (see also #8 below regarding 'mezzanine' syndicate banks), this being one context where syndicate banks might potentially apply the standard on a voluntary basis.

3. **SSA issuers** – The scope of the draft standard excludes sovereign, supranational or agency (SSA) transactions (II.2 #3). This may help the standard align with the expectations of certain SSA issuers (notably certain sovereign issuers) that their transactions not be subject to otherwise generally applicable requirements. It is however worth noting that, aside such issuers, the SSA space might be another context where syndicate banks might potentially apply the standard on a voluntary basis.

Technical inaccuracies/clarifications

4. **Secondary market not just after primary issuance** – The secondary trading market covers transactions between market participants other than the issuer in its capacity as such (including conditional trading pre- and post-FTT as noted in #5 below) – and so not just bonds that have already been issued in the primary market (i.e. where primary closing/settlement has occurred). This should be corrected in the standard.

5. **'Pre-FTT trading', rather than 'Grey market'** – The term 'grey market' can mean different things in different contexts. Whilst it may sometimes mean secondary trading outside a formalised context such as on a stock exchange (as suggested under the *Stock market securities* heading of the Wikipedia entry), this is not so in the context of bonds that have traditionally traded mainly OTC in any case. Rather the term 'grey market' has tended to be used for the initial stage of conditional trading (conditional on the bonds actually being issued) – namely the stage prior to the syndicate banks themselves (both senior and junior syndicate members) being able to start trading (whether on a proprietary basis or otherwise) following pricing and investor notification of their allocations ('free to trade' / 'FTT'). This initial stage usually lasts for just a few hours. MiFID restricts trade reporting until certain information on the underlying security is available, so conditional trading cannot in effect begin in Europe until such information is available (the start of conditional trading would otherwise be open ended, albeit only hypothetically). Secondary trading continues to be conditional after FTT, until the bonds are issued on closing/settlement of the primary transaction (usually T+5 in an EMEA context). Some may even use the term 'grey market' to mean the entire conditional trading period (pre-FTT and post-FTT). Consequently, the standard should reference *"pre-FTT trading"* for accuracy and clarify the related dynamics.

6. **'Orders', not 'IOIs'** – Investor allocations are based on actionable 'orders'[1] and not mere 'indications of interest' (IOIs), which cannot be allocated as they are subject to reconfirmation as orders. References in the standard to *"indications of interest"* should thus be replaced by references to *"orders"*.

7. **Syndicate formation** – Syndicates are formed exclusively by an issuer to work for such issuer. They are not formed at the behest of the syndicate banks involved. This should be clarified in the standard.

8. **Senior syndicate banks, not junior/mezzanine banks** – In practice it is only the 'senior' syndicate banks actively running the order book (active bookrunners) that have access to, and so are able to share, allocation data on the day of pricing. Junior syndicate banks do not have such access, whilst certain 'mezzanine' syndicate banks may have access after the day of pricing under ICMA PM Handbook Recommendation R6.4 (see box). This should be clarified in the standard.

> Access to distribution // R6.4 // For a pot deal, the bookrunner should (absent written issuer objection) give any other lead manager without responsibility for actively running the order book for that transaction access to the detailed distribution data for the transaction by close of business on the business day following the pricing of the transaction.

9. **Private side vs public side** – It is relevant, in terms of the wider information flow context, that syndicate banks operate internal segregation between their 'private' sides (including origination and syndicate desks) and their 'public' sides (including sales and trading desks). This should be clarified in the standard.

10. **Drafting amendments** – Specific drafting amendments relating to #4-#9 above are set out in Annex 2.

<u>Implementation</u>

11. **Issuer opt-out** – Syndicate banks applying the standard will need to put in place logistics to execute the required information flows with issuers. (Incidentally, if the issuer delays confirming its election until after the opening of order books, then the bookrunner responsible for communicating the issuer's election to the other syndicate banks will obviously not be able to do so prior to the opening of order books as envisaged under Core Principle 1.)

12. **Investor opt-out** – As noted in III.4 #4 and absent delivery of an advanced technical solution operating across syndicate banks, more than an insignificant proportion of investors electing to opt out may result in no allocation sharing at all by syndicate banks applying the standard (on a deal-specific basis or even potentially more generally). This could have an adverse effect on market-making and consequently on new issue after-market liquidity and volatility, and so in turn notably on long term investors whose portfolios are required to be marked to market.

13. **Coordination** – Syndicate banks applying the standard may seek to synchronise their implementation of the standard to minimise investor-facing inconsistency. The fact that FMSB members are able to confirm their adherence to a standard in the calendar year following the final adoption of such standard is vital in this respect. There may however still be some potential for

[1] Albeit subject to allocation by/for the issuer and not a 'client order' as might be the case in a secondary trading context. Investor-facing relationships in a primary issuance context may or may not amount to a 'client' relationship. In the UK for example, an investor may formally be, depending on circumstances, a 'corporate finance contact' rather than a client.

friction to arise (bearing in mind the intra-day timing of new issue executions) if contradictory opt-out information has been given by individual investors to different syndicate banks (hopefully this should be a rare occurrence).

Annex 2 – Drafting amendments

II The sharing of investor allocation information

1. Explanation

Syndicate banks historically have had varied approaches to, and procedures governing, the internal sharing of investor allocation information relating to new issuances in fixed income primary markets on the day of pricing.[2] […]

[…]

3. Glossary

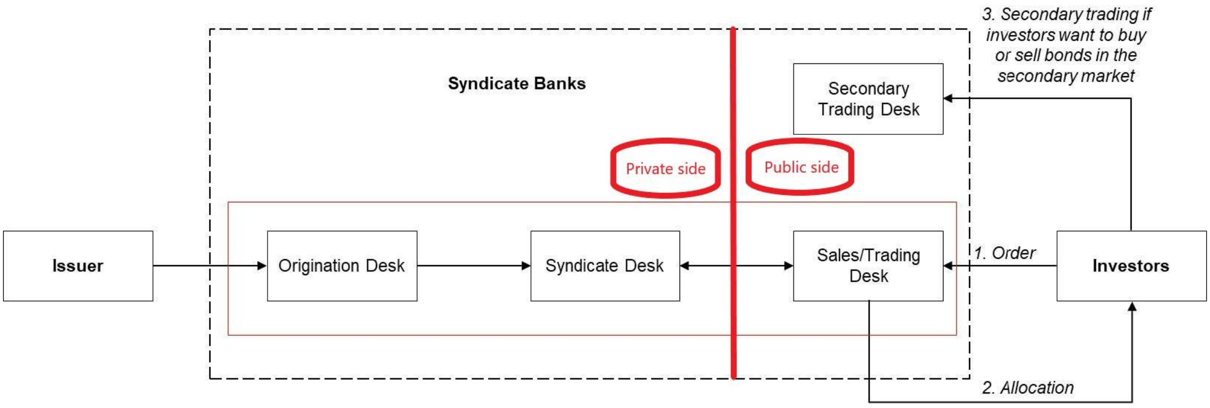
Term	Definition
'Allocation Data'	The list of final agreed investor allocations for a given new issuance of fixed income bonds in the primary market containing the investor institution name and their allocated quantity of securities. Allocation Data does not include any details of investor orders ~~indications of interest~~.
[…]	
Free to trade	Used where there are no internal (restricted list) or external restrictions on trading so a trader in a syndicate bank working on the public side is free to solicit orders ~~interest~~. In the primary market, bonds are free to trade after the transaction has been priced and investor allocations have been communicated to investors.
Pre-FTT trading ~~Grey market~~	The conditional ~~unofficial~~ trading of securities before free to trade ~~they have formally priced~~. Also known as the initial stage of the 'if and when issued' market (which continues after free to trade until closing and settlement of the primary issuance itself).
[…]	[…]
Pricing	The process by which the syndicate, having allocated bonds to investors who have communicated orders ~~indications of interest~~, determine, in conjunction with the issuer, the final terms of the deal and calculate a reoffer price for the securities to be issued. This reoffer price may be based on a reference rate, reference bond or outright yield. The reoffer price will depend on the coupon of the security which is determined in conjunction with the issuer.
[…]	[…]
Secondary market	The market for bonds away from ~~that have already been issued in~~ the primary market. In the secondary market, investors trade bonds with other investors through financial professionals. The investors who sell the bonds receive the proceeds, minus fees or commission payable to banks or brokers that facilitate the transaction.
'Secondary Trading Desk'	The public side trading desk of a~~n~~ syndicate ~~investment~~ bank that may trade in ~~issued~~ fixed income securities in the secondary market once final allocations are complete and the relevant issue is priced and free to trade.
[…]	[…]

Syndicate bank	A member of a group of investment banks which jointly underwrite and distribute a new security offering in the primary market. A syndicate is not a permanent group, but formed~~s~~ specifically by an issuer client to execute a deal in the primary market, for example where it may be more efficient for a group of investment banks to work together for the issuer.

III Role of syndicate banks and purpose of sharing investor allocation information

1. Introduction

As part of the process of issuing a new fixed income instrument, investors will communicate an order for the transaction which represents the demand or maximum allocation they would want to receive (‘order ~~indication of interest~~’). Once the issue size and transaction parameters for a new issue have been agreed with the issuer, the syndicate banks or a specified member(s) of the syndicate banks on behalf of the group will communicate to each investor the number of bonds each investor will receive (‘allocation’).



2. Pre-FTT ~~Grey market~~ trading

A new issuance will be free to trade by syndicate banks in the secondary market once the allocations have been communicated to investors, final pricing terms have been made public and a time for free to trade ~~has been~~ agreed among the bookrunners has passed. Pre-FTT ~~Grey market~~ trading may commence upon first publication to the market of initial terms of the relevant transaction (MiFID restricts trade reporting until certain information on the underlying security is available, so conditional trading cannot in effect begin until such information is available.) In pre-FTT ~~grey market~~ trading, parties other than the ~~non-~~syndicate banks ~~and investors~~ may trade in the relevant bonds before they are legally issued and available for delivery and settlement (but conditionally on such issuance occuring). The ability to engage in pre-FTT trading~~e~~ ~~in the grey market~~ may be advantageous to non-syndicate banks as it allows them to gather information as to initial investor appetite and whether such investors may wish to rebalance against their initial allocation.

In many European primary market segments (excluding, for example, SSA offerings), it is accepted market practice that syndicate banks ~~that play a role in the pricing and allocation of an issuance~~ do not engage in pre-FTT trading~~e on a proprietary basis in the grey market~~.[4]

[...]

5. Syndicate bank considerations

The key benefit that syndicate banks derive from sharing investor Allocation Data with their Secondary Trading Desks is that, for a limited period on the day of pricing, they have a timing advantage over other market participants in using such information once the issuance is free to trade in the secondary market. This advantage may allow the syndicate bank to trade a higher volume of bonds in initial secondary market trading as they can use this information to approach investors who already received an allocation in the primary market and therefore may be interested buyers or sellers. By contrast, ~~non-syndicate banks and~~ other market participants (including junior syndicate banks) will not have access to the Allocation Data and therefore will not be able to determine immediately which investors have been allocated securities and therefore who is likely to want to buy and sell such securities in the secondary market. This information advantage reduces after the immediate secondary market trading as other ~~non-syndicate~~ market participants can build up this information manually through speaking with investors.

IV Core Principles and commentary

[…]

2. Investor opt out

[…]

For the avoidance of doubt, nothing in this Standard inhibits the sharing of investor Allocation Data with salespersons where this is necessary for the provision of the client service in question. This may be the case for example where a salesperson receives an order ~~indication of interest~~ from, or communicates the allocation to, an investor[6].