



[ENGLISH “COURTESY TRANSLATION” OF THE ORIGINAL DOCUMENT IN ITALIAN
SUBMITTED TO THE BANK OF ITALY]

To:

Bank of Italy

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Attn Mr. Francesco Piersante

Rome, 22 June 2016

Bank of Italy Circular entitled “Information reporting as contemplated in Article 129 of the TUB relating to the issue and offer of financial instruments in Italy” (Circular) – Observations and Questions

Dear Mr. Piersante,

Following the adoption of the Circular pursuant to Article 129 of Legislative Decree no. 385 of 1 September 1993, as amended (the **Italian Banking Act**, or **TUB**), which occurred on 25 August 2015, we wish to briefly submit to the attention of the Bank of Italy the main doubts concerning the interpretation of the Circular, as shared with our Law Firm, by several market operators who are in the process of finalising the internal systems and procedures necessary to comply with the new reporting requirements applicable as of 1 October 2016.

In light of the above, we herein provide a few observations and proposals. Please note that the trade associations “The Joint Associations Committee on Retail Structured Products” (JAC) along with “The International Capital Market Association” (ICMA) and “The International Swaps and Derivatives Association (ISDA)”¹, as well as the “Associazione Intermediari Mercati Finanziari - ASSOSIM”] support the position hereinafter expressed.

We would like to point out that, although we reaffirm the observations already submitted by our Law Firm in the position papers brought to the attention of the Bank of Italy during the consultation process concerning the rules in question, it is not our intention to suggest the entire revision of the Circular also considering its upcoming entry into force.

Below, very briefly, we have stressed only the critical points that we consider to be of fundamental importance for the purposes of adopting a set of rules that effectively takes into account the requirements of market operators at both the national and international level.

In this respect, please find attached to this letter a list of questions, mainly of practical relevance, which have been raised by several banks. We kindly ask you to provide an answer to these questions before the entry into force of the Circular.

We further hereinafter convey the request, coming from various market operators, for an English language web platform for the compliance with the new reporting requirements and for the prompt publication of

¹ For a summary of the activities of the associations mentioned above, we refer to the footnotes contained in the English version of the document in response to the consultation, sent by our Law Firm to the Bank of Italy on 13 December 2013.



definitive, clear guidance (also in the English language) to be made available in order to enable compliance with the new rules in time for their entry into force.

We are at your disposal for any further clarification you may consider necessary and/or appropriate.

Respectfully yours,

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ATTACHMENT

- 1) *List of questions concerning the application of the Circular.*



Observations relating to the Bank of Italy' Circular:

"INFORMATION REPORTING AS CONTEMPLATED IN ARTICLE 129 OF THE TUB RELATING TO THE ISSUE AND OFFER OF FINANCIAL INSTRUMENTS IN ITALY"

**OBSERVATIONS RELATING TO THE CIRCULAR OF THE BANK OF ITALY ENTITLED
"INFORMATION REPORTING AS CONTEMPLATED IN ARTICLE 129 OF THE TUB RELATING
TO THE ISSUE AND OFFER OF FINANCIAL INSTRUMENTS IN ITALY"**

A. Timing

The assumption underlying the provision of the new reporting requirements in the Circular is that some of the information to be reported (limited to securities with ISIN Domestic Code) would already be required for the *Anagrafe Titoli* (AT) purposes at the time of allocating the ISIN codes to newly issued financial instruments.

However, once again please note that the reporting obligations required by the AT do not apply in relation to a significant number of cases, especially in the event in which the assignment of the ISIN code is requested and obtained in jurisdictions other than in Italy (this is the case of almost all of the so-called Eurobonds that normally have an ISIN "XS" code issued by Euroclear or Clearstream).

Nevertheless, as we have often underlined, the requirement of reports characterised by articulated and periodical timescales:

- a) would force market operators to set up a special internal compliance system suitable for the specific reporting purposes, with a consequent significant increase in costs and procedures which fall beyond the ultimate goals of the Circular;
- b) could raise difficulties in the practical implementation of the regulation in question, in particular with respect to financial institutions that operate at a global level handling substantial volumes of business, which would find it complex to set up a system able to satisfy reporting obligations on an almost daily basis;
- c) in light of a) and b), is likely to lead to non-resident entities being discouraged from issuing and offering financial instruments in Italy (especially in the case of placements in Italy of not significant amounts in the overall context of the transaction), taking into account the possible "anomaly" of the Italian case as compared to the other Eurozone countries.

In particular, market operators point out that it could be difficult to implement the provision set out in Section 3 of the Circular (*"within the working day following the filing of the prospectus with the competent authority or, in cases where filing is not required, within the settlement or issue date"*). Considering the articulated organisation of the institutions subject to the reporting obligations and the volume of market operations, the deadline in question may prove to be too strict in light of the time schedule of the transaction, as such, there would be too limited time to comply with the reporting obligations.

In order to meet the market operators' needs while allowing the storage and the update of the required information in the *Infostat* platform, it would be highly advisable to **revise the considered timeframe by envisaging a single term for the reporting obligation that should be carried out ex post on a monthly basis** (as in the past pursuant to the previous provisions of Article 129 TUB). This deadline would suit, in particular, the requirements of the above-mentioned international institutions.

In addition, we understand that banks are obliged to submit monthly reports on a harmonised basis in 14 European countries (including Italy) in respect of their activities as primary dealers for government bonds. So adopting a similar, monthly reporting system would be consistent with that approach.



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B. Content of the reports

The obligations arising for the entities involved in the reporting system pursuant to Article 129 TUB, though fewer than in the initial draft of the Circular, are still excessive.

In particular, we suggest that the requirement concerning the *"Early redemption amount"* should be revised considering that:

- (i) the information to be provided may not be known to the entities required to submit reports (as in the case of those who place securities of non-resident entities that are not otherwise required to monitor the life of instruments issued by third parties during the life of the same). In other words, the new obligations would result in the requirement for the reporting entity to monitor daily and for the entire duration of the financial instrument (which may even be 20/30 years) the activities carried out by the issuers on their own by means of both buy-back market operations and early redemption options as set out in the terms and conditions of the instrument itself; and
- (ii) it would actually not be possible to comply with the envisaged disclosure obligations, if we consider the time schedule assumed for reports of this type in Paragraph 3, letter b), point (ii), of the New Draft, which requires the report to be submitted within the day after the date of settlement, where this date is held to refer to the day of issue (when it is not possible to hypothesise early repayments to be reported).

As such, this reporting requirement should be removed or should only apply to Italian issuers.

C. Temporary regime and reassessment

In light of the likely difficulties relating to the application of the Circular, we kindly ask the Bank of Italy to:

1. Set out a **"grace period"** without any risk of sanctions (after the date of 1 October 2016), in order to allow the entities subject to reporting obligations to test the *Infostat* platform for the purposes of complying with the Circular (as well as with the operational handbook which we understand will be made available). This way, market operators could assess the adequacy of their organisation and procedures, and as the case may be, the need to make appropriate changes; and
2. Consider the opportunity of a **reassessment by the Bank of Italy of the framework** put forward in the rules in question, following a period of time judged sufficient after the entry into force of the Circular (e.g. 6 to 9 months after the date of 1 October 2016), in such a way as to enable the Bank of Italy to: (i) assess whether the system of reporting proposed in the Circular - being quite different from the requirements envisaged to date in terms of final reporting obligations pursuant to Article 129 TUB - has actually been implemented correctly by the entities affected by the new reporting obligations and (ii) eventually formulate a reassessment of these obligations on the basis of the verification carried out, taking into account any observations that may be provided by recipients of the measure and market operators.

D. Bank of Italy's support- Questions and Answers

We kindly remind you of the need to provide as soon as possible access to the *Infostat* platform and all the information concerning it (i.e. the application for the access to the system, the operational handbook which is expected to be published, any answers to Frequently Asked Questions etc.) also in the English language so as to allow all entities subject to reporting to comply with the Circular. We would like to highlight that, as currently drafted, the Rules have significant impact for non-resident entities and it is therefore important to



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(i) ensure that any guidance/platform is in English language and (ii) allow information to be reported on the Infostat platform only in English.

Finally, as mentioned, in light of the difficulties concerning the interpretation of the Circular, in particular with respect to technical and practical issues, we wish to ask the Bank of Italy to make available, and update from time to time, a Frequently Asked Questions document (in Italian and English language) which comprises an answer to the questions listed in Attachment 1 to this letter; we remain at your disposal to provide any clarifications you may deem necessary. Please note that this type of document, used also by other Supervisory Authorities especially in relation to regulations which may prove to be innovative and/or technically complex, would be much appreciated by market operators as it would provide practical instructions concerning issues which do not fall within the Circular's wording.

Allen & Overy – Studio Legale Associato



List of questions relating to the Bank of Italy' Circular:

"INFORMATION REPORTING AS CONTEMPLATED IN ARTICLE 129 OF THE TUB RELATING TO THE ISSUE AND OFFER OF FINANCIAL INSTRUMENTS IN ITALY"

ATTACHMENT 1

LIST OF QUESTIONS RELATING TO THE CIRCULAR OF THE BANK OF ITALY ENTITLED *"INFORMATION REPORTING AS CONTEMPLATED IN ARTICLE 129 OF THE TUB RELATING TO THE ISSUE AND OFFER OF FINANCIAL INSTRUMENTS IN ITALY"*

QUESTIONS RELATING TO SCOPE

1. Please confirm that the rules relate only to primary market transactions and not secondary market transactions, including open market repurchase transactions.
2. Please confirm that primary market sales of UCITS funds (whether registered for distribution in Italy or not) are excluded from the reporting obligation.
3. Please provide a definition of the meaning of the following terms:
 - a) *"Underwriter"*
 - b) *"Residual financial sector"*
 - c) *"Auxiliaries"*
 - d) *"Families and institutions serving households"*
4. As stocks are expressly excluded, please confirm that rights issues are also out of scope.
5. Please indicate whether convertible and exchangeable instruments (*convertible bond/exchangeable bond*) are excluded from the reporting obligation or not.
6. Please confirm that all depository receipts representing shares (whether in the form of Global Depository Receipts, American Depository Receipts, American Depository Shares or otherwise) are excluded from the reporting obligation.
7. Queries relating to the reverse enquiry exclusion (Article 2.2(4))
 - a) Does the reference to the "underwriters" (*sottoscrittori*) in the definition of "reverse enquiry" refer to the actual underwriter(s) being intermediaries buying from the issuer and reselling to final investors, or to the actual final investors?
 - b) Please clarify whether the exclusion of subsequent trading of the financial instruments under the definition of "reverse enquiry" could be agreed in a side letter or if such exclusion should be included in the documentation that governs the financial instruments themselves. If the latter is expected, please clarify if such provision could be added in the applicable Final Terms as a selling restriction or if Bank of Italy expects that such exclusions must be included in the true terms and conditions of the financial instruments.
 - c) Does reliance on the reverse enquiry exemption also need to be documented by way of a specific reverse enquiry investor letter?
8. Please confirm that Schuldschein instruments are excluded from the reporting obligation.
9. Please clarify the definition of "stripping" in the exclusion "financial instruments resulting from the stripping of debit instruments (Article 2.2(7)).
10. Queries relating to the scope of "Structured financial instruments":



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- a) Please confirm that the definition "financial instruments incorporating a derivative component" is intended to exclude bonds and securitisation structures where the collateral is formed by assets (and not a swap), even if there is a swap associated with the transaction e.g. for hedging purposes.
- b) Please confirm that cash securitisations (eg RMBS or CMBS) do not fall within this definition.
- c) Please also clarify whether synthetic securitisation structures where the only collateral is a swap, for example a credit default swap offering protection for losses over a portfolio of loans fall within scope or not.

If any one of the above is in scope, it is not clear how the information in Section 3 would apply, such as for example the information on leverage of the security.

- 11. Please clarify, with reference to the exclusion of Article 2.2(10)² whether stock options with "*cash settlement*" are in scope or not.
- 12. Please confirm that placement of securities with a fund managed outside of Italy is out of scope.
- 13. Please confirm that placement of securities with an asset manager based outside of Italy is out of scope.
- 14. Please clarify whether the placement of securities at non-Italian branches or non-Italian subsidiaries and affiliates with legal personality of Italian entities are in or out of scope. In particular, with regards to the information set forth in Paragraphs 1.3 and 2.1(c), it would be appropriate to receive some clarification as to the scope of the concepts of "*issue, offering or placement in Italy*", especially in the event that the securities are placed in Italian branches of foreign investors and/or foreign branches of Italian legal entities.

QUESTIONS RELATING TO TIMING FOR REPORTS

- 15. The so-called tickets (*ordini*) may be modified after the end of the bookbuilding. It could be the case that during closed bookbuilding, the investor providing the ticket indicates a different entity and/or branch for the delivery of securities. The definitive information relating to the placement in Italy under these circumstances will therefore become available only subsequent to the settlement date, when the terms for the quality reports referred to in Section 1 have expired. Please confirm that in this hypothesis, the reporting can then occur only in the moment in which the quantitative data has been reported.
- 16. Please confirm that the report in Section 1 of Annex A can be filed within one working day following the settlement date for standalone bonds as well as transactions carried out under MTN Programmes. (From the current wording, it seems that this report needs to be filed within one working day from signing date for standalone bonds, but within one working day from issue date for transactions carried out under MTN programmes.)
- 17. Please clarify whether the competent authority is the listing authority or the competent authority approving a public offer or both?
- 18. In relation to reporting where the filing of a prospectus is not required, it can be deduced that qualitative data must be reported "**within** settlement date **or** issue date", although no specific timeframe is given.

² "Financial instruments that permit exclusively the purchase or sale of the assets listed under the previous numbers, for which settlement through the physical handing over of the assets in question is mandatory (for example stock options that require the physical handing over of the underlying shares are excluded)"



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- a) Should the report be submitted within **one working day** from the settlement or issue date (as it is for the filing of the prospectus)?
 - b) It is up to each entity to decide at which date it wants to submit the report (between settlement date and issue date)?
19. What is meant by "end of placement period or the end of offer period"? Note the distinction between transactions carried out in public offering mode and those reserved for qualified investors.

QUESTIONS RELATING TO REPORTING OBLIGATIONS

20. **Delegation of reporting obligations:** Please confirm and specify the right laid down in Paragraph 3, to delegate the reporting obligations to a third party. This is particularly important for certain public institution or corporate issuers, who may not have the possibility or know how to report.
21. **Responsibility of reporting parties:**
Are those who place the financial instruments of Italian issuers or relating to entities subject to supervision called upon to ensure that the issuer reports or delegates its reporting obligations?
22. **Entities required to report**
- a) With reference to Paragraph 3.(b) 2(ii) (*Data on early redemptions*), those participating in the placement as part of a so-called syndicate or with reference to a so-called private placement cannot provide information on early redemptions throughout the duration of the security: it constitutes information which is not monitored for the duration of the security and can only be provided by the issuer. If this requirement is confirmed, it should be stated that this obligation – wherever the scenario reflects that described in Paragraph 2.1.(c) – shall not be imposed on the sales agents of securities issued by non-residents other than those referred to in Paragraph 2.1. (b).
 - b) Please clarify who is responsible for reporting in respect of a placement transaction carried out by entities that are part of a so-called 'syndicate' for which there is no pot system and where each bank is responsible for the settlement and the delivery of its own orders.
 - c) In relation to placement transactions carried out by entities that are part of a so-called 'syndicate' using a so-called implemented pot system, please clarify whether the reporting obligation falls with the bank facing the investors or the bank facing the issuer for delivery/settlement. Please note that these could be different entities.
 - d) Please confirm that when a bank is a member of placement group but has a passive role (i.e. that it does not in fact place any notes), the bank will not have to submit any report (stating, for example "null amount placed").
 - e) [In relation to placement transactions carried out by those who participate in a so-called syndicate and use a so-called pot system, please clarify how X account orders (i.e. when the lead manager does not know the name and/or country of the client submitted by another member of the placement group) must be reported.
 - f) In addition to the doubts expressed above, please consider that there are often different syndicate teams according to their corresponding regions (e.g. EMEA/APAC/US) present in the international banks, that may even have different information systems. This involves an additional burden in terms of implementation of the procedure in different regions and teams on a global basis. How might this situation be mitigated?
 - g) Private banks are not often the underwriting entities in publicly distributed new issuances of securities, but may purchase securities, including structured notes and units in UCITS,



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directly from issuers (either other companies of the same group of the private bank or third party issuers) and sell them to HNWI resident in Italy. This could happen following advice and recommendation from the private bank to the client, following a request that had not been solicited from the client for a specific instrument, or on a discretionary basis. Would such sales need to be reported?

QUESTIONS RELATING TO SECTION 1 - MAIN INFORMATION:

23. **Issuer's parent company code/ Guarantor's code/ guarantor's parent company code:**
 - a) Where is this information available? If it is true that these codes may be obtained via the process to obtain ISINs, it should be taken into consideration that many ISINs are obtained from Euroclear/Clearstream or other foreign authorities, so it is not clear how this information can be obtained and by whom it might be obtained.
 - b) How do non-resident entities obtain a "registered code"?
 - c) Would a lead manager responsible for taking care of the settlement and/or the delivery of securities be required to obtain and then provide this information or is this requirement only applicable to Issuers? Please note that (i) only issuers could possess this information; and (ii) it may take some time for these codes to be obtained in relation to non-Italian issuers and this could impact compliance with the envisaged due dates (according to current provisions, this information has to be reported by the first working day subsequent to the issuance).
24. Please also clarify to which entity the codes should relate in relation to SPV issuers which only carry out a single transaction (i.e. should the code relate to the SPV issuer, the originator or the originator's parent?).
25. **Economic Activity Sub-Group:**
 - a) Will Circular no. 140 also be made available in English?
 - b) What would the "economic activity sub-group" be in case of an SPV which does not do anything but one or more securitisation transactions? Do we look at the originator and the portfolio?
26. **Type of financial instrument:** It would be helpful if market participants were permitted to examine in advance a detailed description of the "Type of financial instruments" field that will be available in the Infostat system, as this could help the intermediaries in the identification of the financial instruments in scope of reporting obligations.
27. **Regulated market of listing** – The rules require indication if the "most important" market in the case of listing on one or more foreign markets. Which criteria must be followed by the reporting entity in order to evaluate the "importance" of the market of listing?
28. **Selling restrictions:** Should parties report selling restrictions in the various countries as they appear in the offer/listing documents, or should they limit themselves to those relating to specific categories of investors and referring solely to Italy? Please note that there may even be over 50 selling restrictions subdivided by country and geographical area set out in the offering/listing documentation and as such, we would suggest further specifying the above.
29. **Priority in repayment:** The principal redemption priority may alter during the life of the securities for example following a step-up/call date: should all the various priorities that are expected be reported or just those referred to at the time of issue?
30. **Issue or offer price** – Please confirm that this data is only required for financial instruments placed and offered in Italy and not to financial instruments issued by an Italian issuer and placed abroad.

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31. **Maturity Date** – Please confirm that in the event that there is an envisaged scheduled maturity date that could possibly be pushed back (for example in the case of credit linked notes), the information that should be reported is the initially-envisaged maturity date, not the long-stop maturity date.
32. **Indexing of principal/coupons** – What should be reported where multiple parameters are involved (e.g. in the context of worst instruments of basket trade or in the case of hybrid transaction)?
33. **ISIN code for the index parameter:**
 - a) Reference rates such as Euribor generally don't have ISIN codes. Should market participants simply specify the reference rate if there is no ISIN code available?
 - b) What should be provided where instruments with multiple underliers are referenced (e.g. in the case of Custom Basket Transaction)?
34. **Early redemption option**
 - a) Please confirm that these fields will require a simple clarification (i.e. binary response) as to whether there is an early redemption option or not.
 - b) Please clarify whether "autocall" products would be included in this section of the rules. Example autocall: if on any specified date the share price of the company is greater than or equal to 100% of the share price of the company on the initial valuation date of the securities, the securities will automatically redeem on the payment date immediately following the specified date and the issuer shall re-pay the principal amount of the securities to the holders of the securities.
 - c) In securitisation transactions, are originator/servicer's call options to be reported?
35. **Derivative component:** Please confirm that this field will require a simple clarification (i.e. binary response) as to whether there is a derivative component or not.

QUESTIONS RELATING TO SECTION 2 - OTHER IDENTIFICATION INFORMATION:

36. **Expected duration expressed in months:**
 - a) It is not clear what additional information is able to provide the requirement indicated in Section 2 of Annex A given the maturity date will also need to be reported under Section 1. Consideration should therefore be given to removing this requirement.
 - b) If the requisite in question is not removed, please provide details on how this should be calculated. It can be deduced that there may be different methodologies to calculate duration, namely Modified, Effective Modified or Maculay duration. Please confirm that the Maculay method could - *inter alia* - be used for the purposes of reporting.
 - c) For securitizations, please confirm whether the expected duration should be the weighted average life, regardless of any issuer call rights.
 - d) Please confirm that any early redemption due to market disruption should not be taken into account for the purposes of the report in question.
37. **Effective yield / Issuer's borrowing costs:**
 - a) Is the bank responsible for the settlement required to provide this information or is such a requirement only applicable to issuers?
 - b) It is not clear how this data should be calculated. Should the issuer's borrowing cost be calculated by taking into account any hedging contracts? If so, the managers/placement



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entities will not be able to supply that which is requested because information relating to the issuer's hedging may not be available to them. Alternatively, is the issuer's borrowing cost the "fair value" of the instrument?

- c) With respect to a securitisation SPV issuer it is difficult to understand how the cost of the issuer's funding is supposed to be calculated considering that all the SPV costs and outflows at closing and during the life of the deal are supposed to be matched by incoming flows in other words SPV are always supposed to be flat.
- d) In relation to the effective yield at the time of issue:
 - i. please confirm that for variable rate securities, the level at issuance of the reference rate must be taken in consideration and assumed to be constant over time and, if that is the case, for securities indexed to floating rates whose fixing is currently negative, the variable component should be assumed to be negative;
 - ii. if there is a floor on the reference index rather than on the overall coupon of the notes, please confirm how the yield should be split between the guaranteed component and the variable component.

QUESTIONS RELATING TO SECTION 3 – STRUCTURED FINANCIAL INSTRUMENTS:

- 38. **Basic optionality:** Where possible, we suggest giving further clarifications as to the meaning of the expression "path dependent". Does it mean whether the underlying reference asset reaches a particular strike price at any time?
- 39. **Derivative component:** Is there a general definition of "derivative component" for these purposes, or should reference be made just to the securities incorporating a derivative contract as per art. 1(3) of the Consolidated Law on Finance (Legislative Decree 24 February 1998, no. 58)?
- 40. Is it correct that the information in Section 3 is not required for asset backed securities (ABS), including for example CMBS or RMBS?
- 41. **Leverage of the security:**
 - a) Please clarify what is meant by "derivative leverage category – bullish or bearish"?
 - b) Please clarify the meaning of the sentence "*In case the securities whose value depends on the performance of more underlyings is considered the maximum and minimum among all underlyings...*", in particular with reference to the second part: "*In the event that the instrument replicates a leverage index, the leverage will be indicated in relation to the market index reference, not necessarily by leverage*"?
 - c) In case of structured products that derive their value from the performance of one or more underlyings (e.g., an equity index), it is stated that "the maximum and minimum leverage between all the underlyings...must be provided". How should the calculation be made?

QUESTIONS RELATING TO SECTION 4 – INFORMATION OF A QUANTITATIVE NATURE

- 42. **Number of certificates in circulation:** Is this a reference to the number of certificates originally issued or outstanding at the end of each reference quarterly period? The original underwriter or distributor is not in possession of reliable information about total amount outstanding as it does not know what activity/repurchases/cancellations an issuer may have undertaken. In addition, an underwriter that uses a broker or distributor does not know the number of certificates which are placed.
- 43. **Trading price:** Please provide examples of MTFs or trading markets for these purposes. Please note that the original underwriter or distributor is not in possession of reliable information as to the price

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at which bonds are actually traded. Such a subject can provide its own internal fair market value calculation only for the bonds it holds in its books, or the last price at which it has traded, but these are not necessarily the actual market trading prices.