



HANDLING INSIDE INFORMATION & MARKET SOUNDINGS GUIDELINES

FOR INSTITUTIONAL DEBT CAPITAL MARKETS

Australian Financial Markets Association
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Australian Financial Markets Association

Enquiries

Telephone: + 61 2 9776 7900

Email: info@afma.com.au

GPO Box 3655 Sydney NSW 2001

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1. WHAT THESE GUIDELINES ARE ABOUT

1.1. Purpose

This document outlines guidelines for members on:

- the handling of inside information; and
- how market soundings are conducted,

in relation to potential debt capital markets transactions in Australia involving institutional clients.

1.2. Other AFMA Guidelines

In 2011, AFMA first published the guidelines on Handling Confidential & Price-Sensitive Information & Soundings in relation to potential equity capital markets and mergers and acquisitions transactions (ECM Confidential Information and Sounding Guidelines).

AFMA commends the ECM Confidential Information and Sounding Guidelines to all market participants engaged in capital markets transactions. This document addresses the particular characteristics of the institutional debt capital markets in Australia in relation to inside information and market soundings.

1.3. Application

AFMA notes that members will need to consider the applicable rules in all relevant jurisdictions and their own internal policies in applying these best practice guidelines. Members should be aware that different approaches which address the same objectives as these guidelines will also be acceptable.

2. INSIDE INFORMATION

2.1. Inside information

Inside information is information in relation to which the following circumstances arise:

- a) the information is not generally available; and
- b) if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of particular securities.

The fundamental characteristic of inside information is that it is price sensitive. Price sensitivity is to be judged by whether a reasonable person would be taken to expect information to have a material effect on the price or value of particular securities if (and only if) the information would, or would be likely to, influence persons who commonly acquire securities in deciding whether or not to acquire or dispose of the first-mentioned securities.

Accordingly, members should be aware that any price sensitive information that is not generally available may amount to inside information.

The fact that information is confidential information does not, of itself, mean that the information is also inside information. The two terms should not be confused. In general terms, information is confidential if it is not generally available. For confidential information to also be inside information, it must possess the quality of price sensitivity.

2.2. Documented procedures

Members should have documented policies and procedures that address behaviours in the handling of inside information. These should:

- a) explain how to identify inside information in the context of a particular transaction,
- b) cover disclosure on a need-to-know basis, and
- c) have secure environments and information protection.

Staff of members should agree to comply with these policies and procedures in their terms of employment, and this should be reinforced in staff inductions and ongoing training.

These policies and procedures should describe and be supported by appropriate information management arrangements between “private-side” investment banking personnel from “public-side” sales and trading personnel, such as through physical and system information barriers. An insider list for transactions involving the handling of price sensitive information provides a useful tool for audit and regulatory purposes. An insider list should list by name transaction deal team members. Other staff with likely access to inside information but who may not necessarily access it, or staff involved in internal committees (or who are involved in senior oversight), or who have an administrative, support or risk management function (including legal and compliance, conflict management, internal audit, risk, word processing, printing, photocopying and IT administrators) may be mentioned by class rather than listed individually. Senior individual staff in these classes should be readily identifiable, if necessary, so that a list of names can be produced in the event that an investigation into a leak of inside information needs to be carried out.

3. MARKET SOUNDINGS

3.1. Definition of Market Soundings

Market soundings is the term given to discussions with potential investors, public-side sales or trading personnel, which take place prior to announcement of an actual or imminent debt capital markets transaction, to ascertain interest and/or preferences for a potential new debt capital markets transaction that may involve disclosure of inside information to potential investors, public-side sales or trading personnel.

Where the market sounding involves disclosure of inside information to a public-side employee of the member, the member’s own wallcrossing, information barrier policies and procedures must be followed.

3.2. Market Soundings and Inside Information

Consideration of whether to carry out a market sounding needs to clearly identify whether it is likely to involve disclosure of inside information. Members may find it useful to record the reasons for doing so. Appropriate steps should be taken to restrict trading or advising in securities of the issuer by transaction deal team members. In order to avoid tipping off public side sales, trading or research personnel, the security should not be listed on the firm's restricted trading list which is accessible to public side personnel.

3.3. Issuer's Approval for Market Soundings

Members should obtain approval from the issuer before conducting market soundings involving inside information for a proposed debt capital markets transaction by that issuer. Members should advise informed issuers about which, when, and how potential investors will be sounded and the reasons for doing so, in order for an issuer to make a decision on whether or not to approve the sounding. This restriction does not include a member engaging in general discussions as described in Section 4.1 prior to being mandated on a potential debt capital markets transaction by the relevant issuer.

3.4. Limit

Market soundings should be limited to as few potential investors, public-side sales or trading personnel or other interested parties as the member considers reasonably necessary to gauge the relevant level of interest or commitment for the potential debt capital markets transaction. Market soundings should take place as close as reasonably practicable to the relevant proposed issue of debt market securities.

3.5. Wallcrossing

Prior to disclosing any inside information involved with a market sounding, members should first confirm with the potential investor institution at an appropriate role or seniority whether the potential investor is prepared to be sounded for a potential debt capital markets transaction.

Up to the point when a potential investor agrees to be sounded they should be approached on a no names basis. The potential investor should confirm that they are prepared to be sounded and so receive information that may amount to inside information and as a result, the potential investor would be subject to, and must comply with, all laws and regulations applicable to inside information including the insider trading prohibition in Australia and, to the extent applicable, any corresponding insider trading laws in all relevant jurisdictions. This confirmation should be recorded or documented. Any potential investor who agrees to receive inside information or information which may amount to inside information in this way and is provided such information is described as having been 'wallcrossed'.

The proposed market sounding should not proceed if the identified person at the potential investor institution does not agree to be wallcrossed for a potential debt capital markets transaction.

If any potential investor agrees to be wallcrossed for a potential debt capital markets transaction, members should make an appropriate record of such potential investors who have agreed to be wallcrossed in accordance with members' own internal wallcrossing policies and procedures. For any wallcrossing, members may consider having the potential investor's verbal agreement scripted, obtaining the potential investor's verbal agreement over a taped line or obtaining written acknowledgement from the potential investor by email or otherwise.

4. GENERAL DISCUSSIONS AND INVESTOR MEETINGS

4.1. General discussions

In the ordinary course of business, Syndicate and/or Sales may have general discussions with potential investors or other interested parties using information which does not amount to inside information. For example, relating to trends, conditions and developments in the debt capital markets generally (sometimes described as “market colour”). These discussions may include general or routine discussions to gauge their level of interest in securities of an issuer in the absence of any knowledge or confirmation as to an actual or imminent debt capital markets transaction.

The general discussions are not market soundings and the guidelines in Section 3 in respect of such discussions do not apply.

4.2. Investor meetings

When conducting or participating in a periodic investor meeting and/or general marketing for any potential issuer, all information provided at such meeting must be information which does not amount to inside information. No details of any actual or imminent debt capital markets transaction should be included in the investor meeting materials or discussions.

Members should be aware that in some circumstances the mere scheduling of investor meetings and/or marketing may have a material effect on the price or value of particular securities. In such situation, members should consider utilising a broadcast screen announcement of investor meetings and/or marketing so that other investors may be advised of schedules for investor meetings and/or marketing.

Members should also be aware that an announcement of investor meetings may be necessary for some issuers in compliance with regulatory requirements in the relevant issuer's home jurisdiction and other relevant jurisdictions.