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### **Consultation Report on Conflicts of interest and associated conduct risks during the debt capital raising process**

Dear Mr Eroglu

The Australian Financial Markets Association (AFMA) welcomes the opportunity to make comment on the Consultation Report on Conflicts of interest and associated conduct risks during the debt capital raising process (Consultation).

AFMA represents the interests of well over 100 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. Our members are the major providers of services to Australian businesses and retail investors who use the financial markets.

Australia has a long-standing and well respected debt capital market which is vital to the functioning of the economy. Debt capital market issuances and underwriting are complex services provided by financial market participants in their capacity as lead managers. Lead managers work to ensure debt capital market transactions are executed as smoothly and efficiently as possible, whilst meeting the issuer's size, maturity, pricing and distribution objectives. At the same time, lead managers also need to take into account possible secondary market performance and the willingness of a professional investor base to participate in current and subsequent debt capital market transactions by the relevant issuer. These and other relevant factors need to be considered in constantly changing market dynamics, often involving subjective judgments. Market confidence in the success of new issues is critical in debt capital market transactions. Maintaining this confidence is essential to a successful and sustainable debt capital market in Australia.

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AFMA is of the view that the proposed IOSCO guidance to regulators is already generally reflected in formal law, regulatory guidance and market practice in Australia and no additional actions will be required to be in alignment with it. The following comments on the measures make note of this from an Australian perspective.

### **1. Measure 1 – Managing conflicts of interest**

AFMA considers that Australia has existing law and guidance that substantially meet the objectives of this measure.

Firms that provide financial services in Australia are required to be financial services licensees under Australian law.

A key legislative obligation of financial service licensees is to manage conflicts of interest. This obligation is found in section 912A(1)(aa) of the Corporations Act. In its Regulatory Guide RG 181 Licensing: Managing conflicts of interest, the Australian Securities and Investments Commission (ASIC) sets out its general approach to compliance with the statutory obligation to manage conflicts of interest in s912A(1)(aa), alongside guidance for licensees generally on controlling and avoiding conflicts of interest, and disclosing conflicts of interest.

It is also integral to good client relationship management that a firm should keep the issuer informed of key decisions or actions which may influence the pricing outcome and give the issuer an opportunity to express their preference or instructions regarding the pricing of an issue during the pricing process.

### **2. Measure 2 – Risk management transactions**

The AFMA Swaps Reference Price Transaction Guidelines are in concert with this measure as they say that firms should communicate their hedging practices to their clients in a clear manner. This is meant to enable clients to understand their intentions and actions in the market. The guidance also indicates that firms may hedge for such purposes and in a manner that is not meant to disadvantage the client and they should ensure that the sole intention behind their hedging is risk mitigation.

### **3. Measure 3 – Information**

In practice for the Australian market, AFMA considers that the following principles currently guide the provision of information to investors:

- Primary market activity is an important indicator of prevailing market conditions and informs market participants' assessment of fair value prices for securities;
- Intermediaries and issuers should give due consideration to the interests of the marketplace and all its participants when managing communication on primary market activity and intentions with investors and the market more broadly;
- Information relating to primary issuance activity which is to be shared with 'public side' participants, other than under a formal wall crossing, should be made 'generally available' to all market participants simultaneously and in a consistent form. To be considered 'generally available', information should be actively

disseminated via a channel which can be readily accessed by investors, intermediaries and trading desks;

- Market announcements should be limited to objective factual accounts;
- In the event it becomes clear that a prior statement is no longer accurate or becomes misleading or deceptive, this should be clarified through a subsequent update as soon as possible;
- Market announcements will by necessity include information in a summary form. Information should be sufficiently complete to be informative and to limit the risk of it being misinterpreted. Intermediaries should give careful consideration to the information provided so as to ensure that the information is not misleading nor deceptive (by omission or otherwise);
- Where information is sourced from supporting documentation, announcements should reference the source document if it is practical to do so; and
- Where supporting information is being made available on request to a potential investor, it should also be distributed on request to all bona fide market participants as soon as practicable.

#### **4. Measure 4 - Research**

AFMA considers that Australia has existing law and guidance that meet the objectives of this measure. As noted in response to Measure 1, Australia has a legal requirement for firms that provide financial services in Australia to manage conflicts of interest. In respect of research there is regulatory guidance contained in ASIC Regulatory Guide 79 *Research Report Providers: Improving the Quality of Investment Research* (RG79), which includes guidance for firms that provide research on management and disclosure of conflicts of interest, compliance monitoring, decisions about benefits and remuneration, disclosure of benefits and interests, information barriers, technological, physical and structural segregation, independent reporting lines, fact-checking of research by the issuer and corporate advisory and trading restrictions for research authors.

#### **5. Measures 5 to 8 - Allocations**

AFMA considers that the following guiding principles concerning allocations generally underpin market issuance practices in Australia:

- Firms are often required by the issuer to consider a number of variables when asked to determine allocations.
- Where variation in treatment is applied, there should be a reason for the variation.
- Subject to the issuer's directions, the acceptable reasons for variation in treatment relate to orders that provide leadership in a transaction, to the extent that they meaningfully assist in improving the prospects, volume and/or price of a new issue. Relevant factors that may result in a preferential allocation include, without limitation:
  - the timing of the interest being reflected, including prior to the new issue being launched;
  - the volume of the order;
  - the price level of the order;

- the likely investment horizon of the investor and the likely impact on the secondary market;
  - whether the order is not dependent on a switch out of bonds from the same or another issuer; and
  - issuer preferences around factors such as investor type, style, size and/or geographic location.
- Firms may have policies and/or procedures that set out their process for managing allocation recommendations for debt capital market transactions.
  - To manage perceived and/or actual conflicts of interest, firms should disclose their related party interest to the issuer as part of the allocations process.
  - Allocation recommendations for parties related to the firm should be made in line with similar investor types and in line with the guiding principle mentioned above.
  - Firms should have policies and/or procedures to manage any potential and/or actual conflicts of interest.

Please contact David Love either on 02 9776 7995 or by email [dlove@afma.com.au](mailto:dlove@afma.com.au) if further clarification or elaboration is desired.

Yours sincerely

**David Love**  
**General Counsel & International Adviser**