



Australian Financial Markets Association

**Standard Form Arrangement Letter for
International (excluding US) Debt Offers**

Background and Purpose

In connection with the due diligence process for many international debt offers, accounting firms are requested to prepare a “comfort letter” addressed to the underwriters and the issuer’s board of directors.

In the comfort letter, the accounting firm:

- performs certain agreed upon procedures that give comfort as to the accuracy of numbers appearing in the offer document that have been derived from the issuer’s accounting records and
- provides negative assurance that there has been no material adverse change to the issuer’s financial statements that are included in the offer document.

With respect to a debt offer in the United States in compliance with Rule 144A under the US Securities Act of 1933, the lead managers request a comfort letter in the manner prescribed by Statement on Auditing Standards No. 72 (“SAS 72 request letter”), as issued by the American Institute of Certified Public Accountants in 1995. The SAS 72 request letter contains just one paragraph. In that one paragraph, the lead managers confirm that they are conducting a due diligence process substantially consistent with that which they would perform if the offer of securities were being registered under the Securities Act.

In 2002, members of the International Primary Markets Association (now known as the International Capital Markets Association) and major accounting firms based in the United Kingdom developed a standard form “arrangement letter” for investment grade “straight debt” offers outside the United States. The ICMA form captures the essence of the SAS 72 request letter (*ie*, the comfort letter is part of an overall due diligence process) but, in more than 30 paragraphs, also includes other matters of interest to the accounting firms.

Beginning in 2003, certain accounting firms have sought comparable arrangement letters in connection with international debt offers by Australian issuers and, in more recent years, have sought to broaden the scope of such letters. There has not been an industry standard form and, as a result, negotiation of arrangement letters has consumed undue amounts of time and expense (legal and accounting fees) in some transactions.

To address this situation, Baker & McKenzie has consulted major investment banks, other major law firms and major accounting firms to develop the accompanying Standard Form Arrangement Letter for International (excluding US) Debt Offers. This form is designed for use in connection with offers of debt securities by Australian issuers outside the United States.

AFMA is pleased to have worked with its members and Baker & McKenzie in developing this standard form. As with any standard form, however, when using it, care should be taken to consider the suitability of the use and content in the circumstances of each specific offer of securities.

October 2008

Standard Form Arrangement Letter for International (excluding US) Debt Offers

[date]

[names and addresses of the Joint Lead Managers]
for themselves and on behalf of the Managers

[name and address of the issuer]

Dear Sirs

Proposed offer of [securities] of [name of the company] (the “Company”)

1. This letter sets out the scope of the work to be performed by us (Australian partnership of [name and ABN of Australian accounting firm], a member firm of [name of global firm], “we”, “us” or the “Firm”) as independent accountants in connection with the Company's proposed offer of [securities] (the “Offering”) to non-US persons outside the United States in compliance with Regulation S under the US Securities Act of 1933 (the “Act”) and the terms on which we are to perform such work (the “International Work”). This letter is written in the context of the respective roles of the Company's directors, [names of Joint Lead Managers] (the “Lead Managers”) and ourselves. The Offering will involve the preparation by the Company of an offering circular or offering memorandum in preliminary and final form and as may be amended or supplemented (the “Offering Memorandum”).
2. This letter sets out the entire arrangement between us in connection with the use of a “comfort letter” relating to the Offering outside the United States (the “Non-US Comfort Letter”). This arrangement letter permits the Managers (defined below) to use and rely on the Non-US Comfort Letter outside the United States. [This letter does not apply to, and shall have no effect on the rights or obligations of the Managers or us in connection with, the use of any other “comfort letter” or the Other Work (as defined below) in the United States.]¹
3. This letter is addressed to the Lead Managers on their own behalf and as representatives of each of the managers who participate in the Offering and who have, or prior to the delivery of the Non-US Comfort Letter will have, either agreed to be bound by these terms or authorised the Lead Managers to sign this letter on their behalf (together with the Lead Managers, the “Managers”). For purposes of this letter, the terms “Lead Managers” and “Managers” shall include the respective selling affiliates of such Lead Managers and Managers who participate in the Offering. By signing and accepting the terms of this arrangement letter, the Lead Managers confirm that they will use commercially reasonable endeavours to obtain *prima facie* authority from each Manager to sign this arrangement letter on its behalf. It is, however, agreed that the Lead Managers have no obligation to ensure that such *prima facie* authority actually confers the necessary authority.

¹ Delete this sentence if there is no concurrent offering of securities in the United States.

4. The Non-US Comfort Letter will be provided to the Managers solely to assist them in conducting, documenting or, where relevant, demonstrating their investigation of the affairs of the Company and its subsidiaries in connection with the Offering outside the United States (including, without limitation, for the purpose of establishing a defence in any actual or potential proceeding or dispute relating to, arising out of or in connection with, the Offering). The Non-US Comfort Letter is not to be used, circulated, quoted or otherwise referred to for any other purpose, including the registration, listing, purchase or sale of securities, except that (i) reference may be made to it in any underwriting, distribution, offer management or purchase agreement or in any list of closing documents pertaining to the Offering, (ii) the Non-US Comfort Letter may be disclosed to any of your professional advisers or as may be required by law, regulation, court order or regulatory or self-regulatory authority; (iii) the Non-US Comfort Letter may be produced and the Other Work (as defined below) referred to in any actual or potential court, arbitral or regulatory proceeding or any actual or potential investigation or dispute relating to the Offering Memorandum or the Offering; (iv) the Non-US Comfort letter may be disclosed or referred to third parties where to do so would be reasonable in connection with any potential or actual dispute or to establish a due diligence defence relating to, arising out of or in connection with, the Offering or the Offering Memorandum; (v) the Non-US Comfort Letter may be referred to in any other communications between any of the Managers, prepared by or for the Managers; or (vi) copies of the Non-US Comfort Letter may be included in any compilation of transaction documents memorialising the Offering. We will not accept any responsibility to any party to whom the Non-US Comfort Letter or copies or extracts thereof may be shown or into whose hands they may come, other than the Managers and the Company.
5. It has been and will continue to be necessary for us to receive copies of the draft Offering Memorandum as it is produced and to attend meetings (including meetings with the Company's directors, management and employees, and representatives of the Lead Managers and their counsel) at which the Offering Memorandum is discussed and drafted or at which related matters are discussed. We have answered, and shall continue to answer, queries raised at such meetings and via email on an informal basis (the "Other Work") and we understand that our answers will be used in your due diligence process but, to the extent permitted by law, we shall have no liability to you for such answers unless they were known (or should have been known) to be false or misleading when made and were made with intent to deceive or are confirmed in writing by us. The Other Work will be provided to the Managers solely to assist them in conducting, documenting or, where relevant, demonstrating their investigation of the affairs of the Company and its subsidiaries and the contents of the Offering Memorandum in connection with the Offering outside the United States (including, without limitation, for the purpose of establishing a defence in any potential or actual proceeding or dispute relating to, or arising out of or in connection with, the Offering). Nothing in this paragraph shall prejudice the ability of the addressees to rely on a non-recourse basis on any comments, reports or letters that we may provide in oral or draft form either in the context of any defence you may wish to advance in connection with any court or other legal or regulatory proceedings or where it is reasonable to do so for the purposes of resolving any actual or potential dispute with respect to the Offering Memorandum or the Offering.

6. The Non-US Comfort Letter will relate to specified financial information set out in the Offering Memorandum and will be addressed to the Company, its directors and the Lead Managers (on their own behalf and as representatives of the Managers).
7. [The Non-US Comfort Letter will be provided in reliance upon each Lead Manager hereby confirming that, in connection with the Offering, it is knowledgeable with respect to the due diligence review process that would be performed if this offering of securities were being registered pursuant to the Act and the review process that it will perform is substantially consistent with the due diligence review process that it would perform in connection with a placement of securities subject to registration under the Act. It is recognised that what is “substantially consistent” may vary from situation to situation and may not be the same as that done in a registered offering of the same securities for the same issuer and whether the procedures being, or to be, followed will be “substantially consistent” will be determined by the requesting party on a case-by-case basis.]²
8. The procedures that we plan to conduct, and the form the Non-US Comfort Letter will take, will be discussed between and agreed to by the Company, the Lead Managers and us. [We understand the procedures requested by the Lead Managers and the reporting format of the Non-US Comfort Letter will be those procedures and format that are substantially consistent with Statement on Auditing Standards No. 72 issued by the American Institute of Certified Public Accountants.]³ We will provide the Lead Managers with a draft of the Non-US Comfort Letter to afford them the opportunity to request any additional procedures they may desire. We make no representations regarding the sufficiency for their purposes of the procedures to be carried out by us. We shall perform the International Work in accordance with the applicable Australian auditing standards and not US generally accepted auditing standards. We will confirm in the Non-US Comfort Letter that we are independent chartered accountants under the requirements of the Australian Corporations Act 2001 and the Australian Accounting Professional and Ethical Standards Board's Code of Conduct – APES 110: Code of Ethics for Professional Accountants and its interpretations and rulings and not in accordance with the rules promulgated by the US Securities and Exchange Commission.
9. The procedures we will carry out for the Non-US Comfort Letter will not constitute an audit made in accordance with any generally accepted auditing standards. Also, such procedures may, but will not necessarily, reveal all matters of significance with respect to any comments we make in the Non-US Comfort Letter. We make no representations regarding the sufficiency of such procedures for the Managers' purposes. If we were to perform additional procedures, other matters might come to our attention that we would report to the Managers.

² If there is no concurrent offering of securities in the United States, then delete this paragraph and replace it with the following: “The Lead Managers confirm that, in connection with the proposed Offering, they are aware of the guidance relating to due diligence issued by the International Capital Markets Association from time to time, which will be followed in connection with the proposed Offering.”

³ If there is no concurrent offering of securities in the United States, then delete this sentence and replace it with the following: “Based on our present understanding of your requirements, we expect to be able to provide you with a comfort letter substantially in the form attached to this letter as the Appendix, setting out the procedures that we expect to carry out prior to issuing our comfort letter.” The agreed form of the ICMA-style comfort letter should be attached as the Appendix.

10. The work we undertake in accordance with this letter will be carried out with such due skill, care and attention as professional accountants would be expected to undertake in similar circumstances. Our work in preparing the Non-US Comfort Letter will not go beyond the procedures explicitly set out therein and our findings will be based solely on the procedures actually performed. This is normal practice when acting as independent accountants, but is different from, for example, an audit. Even audit work, with a significant level of detailed testing of transactions and balances, provides no guarantee that fraud will be detected. The International Work is not designed to find fraud or misrepresentation by the management of the Company or its subsidiaries. If, however, we become aware in carrying out our work of any fraud, withholding, concealment or misrepresentation of information by the management of the Company or its subsidiaries that we believe could have implications for the Non-US Comfort Letter or the Offering, we will inform the management of the Company and the Lead Managers as soon as practicable. In such a case, we will discuss with the Company and the Lead Managers, as appropriate, whether further procedures can be designed to resolve the matter. Where such procedures are agreed between us, we will carry them out and amend the Non-US Comfort Letter accordingly.
11. Subject to our obligation to comply with professional standards, in no circumstances shall we be liable (other than in the event of our bad faith, negligence or wilful misconduct) for any loss or damage arising from information material to our work being withheld or concealed from us or misrepresented to us by the directors, employees, or agents of the Company or any other person of whom we may make enquiries in connection with the International Work unless, in our role as independent accountants acting with the due skill and care of a professional accounting firm, detection of such withholding, concealment or misrepresentation should reasonably have been expected because such withholding, concealment or misrepresentation should have been apparent to us from the information provided to us or which should have been considered by us pursuant to the procedures agreed upon under this letter and the Non-US Comfort Letter. This clause, and any assessment of our work made pursuant to it, will have regard to the scope of procedures agreed pursuant to this letter and the Non-US Comfort Letter.
12. To keep you informed of our progress and to facilitate discussion, during the course of the International Work we may provide comments or responses to queries, which encompasses the Other Work, or letters in oral or draft form. As these represent work in progress and may not be our final opinions or conclusions, we do not assume a duty of care (whether in contract, tort or otherwise) to you (or anyone else) in respect of their content, unless and until we confirm it to you in writing in the Non-US Comfort Letter or such other final document agreed between us; provided, however, that this shall not apply to any claims, losses, damages or costs arising from any fraud, dishonesty or wilful misconduct by us or in respect of liabilities that cannot lawfully be limited or excluded. We will draw to your attention all material changes in successive versions of drafts of the Non-US Comfort Letters and provide you with opportunity to request any additional procedures you may desire and reasonable time to review the final form of Non-US Comfort Letter. Unless otherwise agreed, the final results of our work and our definitive conclusions will be set out in our Non-US Comfort Letter and nowhere else. Nothing in this paragraph shall prejudice your ability to rely on any comments or letters we may provide in oral

or draft form either in the context of any defence you may wish to advance in connection with any court or regulatory proceedings or for the purposes of resolving any actual or potential dispute to which you are a party in connection with the Offering and/or the Offering Memorandum.

13. The sole purpose of the work requested and the Non-US Comfort Letter is as set out in paragraphs 4 and 5 above. The provision of the Non-US Comfort Letter and the Other Work will not change in any way the responsibility that we have for any audit or review reports issued by us on any financial statements of the Company and its subsidiaries. We do not, however, accept responsibility for any financial statements included in the Offering Memorandum that were not audited or interim reports that were not reported on by us.
14. The Company and the Lead Managers acknowledge that, to the extent that the Institute of Chartered Accountants in Australia ([state]) Scheme applies by law to the services provided by [Australian firm] pursuant to this letter, liability relating to such services is limited only in the manner and to the extent prescribed by that Scheme.
15. The terms of this letter and any action pursuant to it shall be additional to and shall not detract from, or change in any way, any legal rights that any party to this letter may have (whether in contract, tort or otherwise) in connection with our audits of or reporting on the financial statements of the Company and its subsidiaries.
16. For the avoidance of doubt and subject to the limitations or exclusions that are contained in or referred to in this letter, nothing in this letter shall preclude the Managers from obtaining compensation from us in respect of any liability that any Manager incurs to an investor arising out of the contents of the Offering Memorandum or any omission from it to the extent that such liability arises because of work undertaken negligently or otherwise pursuant to this letter, the Non-US Comfort Letter or any audit of or reporting on financial statements of the Company and its subsidiaries. Nothing in this letter shall affect any rights that a Manager may have in its capacity as a purchaser of the securities sold in the Offering.
17. Because of the importance of oral and written representation to the effectiveness of our work, the Company indemnifies the Firm and its partners and employees (and the partners and employees of any other [global name] Firms as referred to in paragraph 20) from any and all claims, liabilities, costs and expenses attributable to any withholding, concealment or misrepresentation of material information by its directors or management unless, in our role as independent accountants acting with the due skill and care of a professional accounting firm, detection of such withholding, concealment or misrepresentation should reasonably have been expected because such withholding, concealment or misrepresentation should have been apparent to us from the information provided to us or which should have been considered by us pursuant to the procedures agreed upon under this letter and the Non-US Comfort Letter. Without prejudice to any rights which the Firm may have against the Company or its directors in the absence of this paragraph, this paragraph will no longer be effective in the event that any of the Company's securities are registered with the US Securities and Exchange Commission.

18. During the course of the International Work, we may wish to communicate electronically with each other. However, the electronic transmission of information cannot be guaranteed to be secure or virus or error free and consequently such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. We recognise that systems and procedures cannot be a guarantee that transmissions will be unaffected by such hazards, but we each agree to use commercially reasonable procedures to check for the then most commonly known viruses before sending information electronically and acknowledge that such procedures cannot guarantee that transmissions will be free of all viruses.
19. We confirm that we each accept these risks and authorise electronic communications between us. We will each be responsible for protecting our own systems and interests in relation to electronic communications and neither the Company, the Lead Managers nor the Firm (in each case including such party's respective partners, employees, sub-contractors or agents) will have any liability to each other on any basis, whether in contract, tort (including negligence) or otherwise, in respect of any error, damage, loss or omission arising from the interception, corruption, loss, destruction, late or incomplete arrival of information communicated electronically or from information communicated electronically being otherwise adversely affected or unsafe to use.
20. [global firm], a [Swiss Verein or cooperative or UK company], is a world-wide organisation of individual partnerships and companies. Each member firm is a separate and independent legal entity. This arrangement letter is between you and this Firm (the Australian partnership of [global firm]). The services described herein are provided by [Australian firm] and not by the [global firm]. In the course of providing the Non-US Comfort Letter the Firm may, at its discretion, draw on the resources of other [global firm] partnerships or companies (other "[global name] Firms") for whose work we shall take responsibility. This Firm accepts responsibility for the actions of any partner, director employee or consultant of any other [global name] firm assisting this firm in the provision of the services under this letter. Any partner, director, employee, or consultant of any other [global name] Firms who deals with you in connection with the Non-US Comfort Letter does so on behalf of this Firm alone. The terms of this letter shall not detract from or change in any way any legal rights (whether in contract or tort or otherwise) that any party to this letter may otherwise have acquired as a result of fraudulent or dishonest actions or inactions by any other [global name] Firm or any partners, directors, employees or consultants thereof. The provisions of this paragraph are stipulated by the [Australian firm] expressly for the benefit of other [global name] Firms, their partners, directors and employees (collectively, the "Beneficiaries"). To the extent the [Australian firm] takes full responsibility for the work of the Beneficiaries in any legal proceeding, you agree that each of the Beneficiaries shall have the right to rely on this paragraph as if they were parties to this letter and the Beneficiaries assist this Firm in reliance on this paragraph which the [Australian firm] is entitled to enforce on their behalf.
21. This letter shall be governed by, and construed in accordance with, the laws of [name of state], Australia. The courts of [name of state], Australia shall have non-exclusive jurisdiction to adjudicate any claim or dispute that may arise out of or in connection with this letter.

22. Please acknowledge your acceptance of the terms of our arrangement with you by signing the confirmation below and returning a copy of this letter to us at the above address marked for the attention of [].

Yours faithfully

[Australian firm]

Confirmation of the arrangements

We acknowledge and agree to these arrangements with [Australian firm]

On behalf of [Company]

Date:

Signed:

Name and position:

On behalf of [Lead Manager], and for and on behalf of the other Managers

Date:

Signed:

Name and position: