

SWEDISH
SECURITIES DEALERS
ASSOCIATION

Alp Eroglu

International Organization of Securities Commissions (IOSCO)

Calle Oquendo 12

28006 Madrid

SPAIN

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Response to the IOSCO Consultation Report on “Conflicts of Interest and associated conduct risks during the debt capital raising process”

The Swedish Securities Dealers Association (SSDA) welcomes the opportunity to respond to the Consultation Report on “Conflicts of interests and associated conduct risks during the debt capital raising process”. Before commenting on the proposed IOSCO measures, we would like to make the following general remarks.

General remarks

The SSDA welcomes IOSCO’s Consultation Report as well as the aim to provide guidance that helps IOSCO’s members to address potential conflicts of interest and associated conduct risks in the debt capital raising process.¹

Please note that the SSDA also responded to IOSCO’s consultation in 2018 relating to conflicts of interest and associated conduct risks during the equity capital raising process.² We

¹ The SSDA was founded in 1908 and represents the common interests of banks and investment firms active in the Swedish market. The SSDA’s main objective is to promote a sustainable and competitive securities market.

²https://www.fondhandlarna.se/files/1415/2293/0703/FINAL_SSDA_IOSCO_Consultation_Response_Conflicts_of_Interest_20180404.pdf

support the ambition to align the proposed Guidance with the Guidance for equity capital raisings, where relevant.

As in the case for equities, it should be noted that from a European perspective, many of the identified risks are covered by MiFID II (2014/65/EU), including delegated regulation (2017/575/EU) as well as the Prospectus regulation (2017/1129/EU) and MAR (2014/596/EU). In the SSDA's view no additional regulation on conflicts of interest is therefore needed in the EU. However, we have no objections against the introduction of general principles on a global level, provided it is in line with and does not provide a more stringent regime than the existing EU framework.

Finally, we would like to underline that the Swedish debt capital market, which is fairly similar to the rest of the Nordic market, is a mature market. The issuers of corporate bonds are all type of companies and the bonds are both investment grade and high yield. There is also an emerging green bond market amongst corporates. The advisers range from bigger commercial banks (through the investment banking unit/markets unit) and other specialized investment banks and niche players. The typical investors are professional parties such as fund companies and other investors with a focus on debt investments. The regulatory environment around debt capital markets in Sweden take European regulations like MiFID, MAR, PRIIPS and other regulations into consideration.

Specific comments on the Guidance

Measure 1: Regulators should consider requiring firms to manage conflicts of interest that may arise in relation to the pricing of a debt securities offering, keeping the issuer informed of key decisions or actions which can influence the pricing outcome and giving the issuer an opportunity to express its preference regarding the pricing of an issue during the pricing process.

From an EU perspective, it should be noted that similar requirements have been implemented through MiFID II Delegated Regulation (2017/565/EU). The SSDA is therefore of the view that no additional regulation is necessary in the EU, but we have no objection to introduce general requirements on a global level, provided it is in line with and does not provide a more stringent regime than the existing EU framework.

Measure 2: Regulators should consider requiring firms to take reasonable steps to disclose to the issuer how any risk management transactions it intends to carry out for itself, the issuer, or investor clients, will not compromise the issuer's interests in relation to pricing of the new issuance.

According to the SSDA risk management transactions such as pre-hedging activities is conducted in the interest of and for the benefit of the customer to enable the investment firm to provide a price or quote and ensure successful execution and completion of a transaction. In some cases, pre-hedging is necessary in order to ensure that a transaction is possible to execute, for example if there is low liquidity in a market or relevant financial instrument (for example illiquid currencies, rates or financial instruments). Pre-hedging is not conducted for the benefit of the investment firm or bank or for it to make a profit.

In our experience, conflicts of interest arising from the fact that hedging strategies and risk management transactions are undertaken on the firm's own account by the trading desk are in practice taken care of by organisational measures such as establishment of Chinese Walls. Also, from an EU perspective, it should be noted that MiFID II rules on conduct of business include the obligation for investment firms to act honestly, fairly and professionally in a

manner which promotes the integrity of the market and to act in accordance with the best interest of clients. (Article 24 of MiFID II). Thus, there are other ways for regulators to handle conflicts of interest arising from risk management transactions than adopting disclosure requirements.

Finally, we note that the proposed Guidance 3 is very wide in scope as it also includes risk management transactions carried out for “investor clients”. Such requirement could in our view be very difficult to comply with as secrecy rules would normally hinder an investment firm from informing an issuer client about transactions that it carries out for other clients.

Measure 3: Regulators should encourage the timely provision of a range of information to investors in a debt securities offering, where distribution of such information is permitted under local law.

From an EU perspective, bond issues are subject to the Prospectus regulation (2017/1129/EU) and no additional information requirements are in our view needed. Also for issues which fall under the exemptions of the Prospectus Regulation, there are sufficient investor protection rules in other pieces of EU legislation, such as obligation in MiFID II to provide information that is fair, clear and not misleading as well as product governance and suitability requirements.

Finally, the SSDA would like to point out that the interpretation of “timely” can vary depending on the local market and type of offering.

Measure 4: Regulators should consider requiring firms to have appropriate controls to identify, prevent where possible and manage any conflicts of interest that arise in the preparation of research on a debt securities offering.

From an EU perspective, it should be noted that similar requirements have been implemented through MiFID II Delegated Regulation (2017/565/EU). The SSDA is therefore of the view that no additional regulation is necessary in the EU, but we have no objection to introduce general requirements on a global level, provided it is in line with and does not provide a more stringent regime than the existing EU framework.

Measure 5: Regulators should consider requiring firms to maintain an allocation policy that sets out their approach for determining allocations in a debt securities offering and for the firm to regularly assess its compliance with the policy.

From an EU perspective, it should be noted that similar requirements have been implemented through MiFID II Delegated Regulation (2017/565/EU). The SSDA is therefore of the view that no additional regulation is necessary in the EU, but we have no objection to introduce general requirements on a global level, provided it is in line with and does not provide a more stringent regime than the existing EU framework.

Measure 6: Regulators should encourage firms to consider their issuer client’s preferences e.g. investor profile and composition, when making allocation decisions or recommendations.

From an EU perspective, it should be noted that similar requirements have been implemented through MiFID II Delegated Regulation (2017/565/EU). The SSDA is therefore of the view that no additional regulation is necessary in the EU, but we have no objection to introduce general requirements on a global level, provided it is in line with and does not provide a more stringent regime than the existing EU framework.

Measure 7: Regulators should consider requiring firms to have appropriate controls to identify, avoid where possible and manage any conflicts of interest that arise in the allocation recommendations of a debt securities offering.

From an EU perspective, it should be noted that similar requirements have been implemented through MiFID II Delegated Regulation (2017/565/EU). The SSSA is therefore of the view that no additional regulation is necessary in the EU, but we have no objection to introduce general requirements on a global level, provided it is in line with and does not provide a more stringent regime than the existing EU framework.

Measure 8 Regulators should consider requiring firms to maintain records of allocation decisions to demonstrate that any conflicts of interest are appropriately managed

From an EU perspective, it should be noted that similar requirements have been implemented through MiFID II Delegated Regulation (2017/565/EU). The SSSA is therefore of the view that no additional regulation is necessary in the EU, but we have no objection to introduce general requirements on a global level, provided it is in line with and does not provide a more stringent regime than the existing EU framework.

Please do not contact any of us if you have any questions in relation to the above.

Kind regards

SWEDISH SECURITIES DEALERS ASSOCIATION



Urban Funered

/CEO/



Sara Mitelman Lindholm

/General Counsel/