

## AMAFI CODE OF BEST PRACTICE FOR EURO PP ARRANGERS

### PREAMBLE

#### Backgrounder

A number of players from the Paris marketplace gathered together in late 2012, united by their determination to promote medium and long-term financing for listed and unlisted mid-sized companies. With backing from the *Paris Ile-de-France* Chamber of Commerce and Industry, the French Treasury and the *Banque de France*, they worked to develop and standardise market practices for euro private placements (Euro PP), using the US private placements market as a model.

A cross-market group was formed, comprising representatives from the different parties involved in such transactions, including issuers/borrowers, investors, arrangers and lawyers. Its work paved the way for the publication in early 2014 of a Charter for Euro Private Placements (**Euro PP Charter**)<sup>1</sup>, which was endorsed by ten market associations<sup>2</sup>. Intended to be both operational and instructional, the Charter provides a non-binding framework of best practices that are essential for the growth of Euro PPs, with a view to developing these transactions and creating a benchmark market for them, both in France and internationally.

In early 2015, continued work by the cross-market group, led by a Euro PP steering committee, resulted in the publication of two model Euro PP agreements<sup>3</sup> covering the two most common formats for Euro PP deals, namely bond issues and loans. Drawn up as part of a consensual process<sup>4</sup> by Euro PP market participants, the agreements, which are designed to dovetail with the Euro PP Charter, provide market participants with a toolkit to help to promote the use of these transactions.

These initiatives have been taken up at European level, and notably by the International Capital Market Association (ICMA), which published its *Pan-European Corporate Private Placement Market Guide* in February 2015.

<sup>1</sup> Available in French and English on the AMAFI website and at [www.euro-privateplacement.com](http://www.euro-privateplacement.com).

<sup>2</sup> Af2i, AFG, AFTE, AMAFI, ASMEP-ETI, FBF, FFSA, GEMA, MEDEF and Paris Europlace.

<sup>3</sup> Available in French, English and Italian on the AMAFI website and at [www.euro-privateplacement.com](http://www.euro-privateplacement.com).

<sup>4</sup> As reflected by the diverse range of entities represented by the market associations that endorsed the Charter and model agreements (see footnote 2 above).

### Objectives of the Code of Best Practice for Arrangers

As the Euro PP Charter states, a Euro PP is a medium or long-term financing transaction between a listed or unlisted company and a limited number of institutional investors, based on deal-specific documentation negotiated between a Borrower<sup>5</sup> and Investors.

The vast majority of deals are conducted with the active involvement of an Arranger. By providing know-how and insight into markets and participants, the Arranger plays an instrumental role in ensuring a smooth and successful transaction.

Acting within AMAFI, the Paris marketplace's leading Arrangers, all of which are regulated financial intermediaries with authorisation to provide investment services, wasted no time in organising themselves to promote the development of Euro PPs. Beginning in early 2012, they spearheaded the creation of the Euro PP Charter by doing the initial groundwork aimed at standardising the contractual documentation for these transactions. These early efforts subsequently fed into the work of the cross-market group.

The main instruments provided to support Euro PPs, namely the Charter and model agreements, are now available (*see above*). However, AMAFI, assisted by its member Arrangers, wanted to underline the key role played by Arrangers in Euro PP transactions. Accordingly, the **AMAFI Code of Best Practice for Euro PP Arrangers** is designed to standardise industry best practices in this area.

The **AMAFI Code of Best Practice for Arrangers** details the tasks, services and due diligence that an Arranger may perform at each stage of a Euro PP. The market standard established by the Code offers the assurance of high-calibre professional services from Arrangers. In this way it gives added security to Borrowers and Investors that choose to participate in a Euro PP involving an Arranger that has undertaken to apply the Code.

This standard does not prevent an Arranger and its client from contractually agreeing to a narrower scope of tasks in the context of a specific deal, nor does it incorporate the many legislative, regulatory and professional obligations that apply to Arrangers in their capacity as investment services providers, which themselves require a high quality of services to be delivered.

The **AMAFI Code of Best Practice for Arrangers** additionally highlights the specific role played by origination / execution teams within universal banks when they act as Arrangers, often alongside the lending departments of the same banks.

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<sup>5</sup> As in the Euro PP Charter, the term "Borrower" is used in this document for Euro PPs in the form of bond issues and loans.

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**A. Arranger's tasks at the origination stage**

- (1) Identify potential Borrowers and determine their eligibility for Euro PP, notably by meeting with CFOs/Treasurers to identify Borrowers that are eligible for Euro PPs and interested in this type of financing;
- (2) Give a presentation on the disintermediated market and the benefits and restrictions associated with Euro PPs in the context of the Borrower's financing needs, as well as other available tools and current market conditions;
- (3) Negotiate and sign an engagement letter with the Borrower, including a non-disclosure undertaking (using the **Non-Disclosure Agreement** template form provided in **Appendix 2 of the Euro PP Charter**);
- (4) Potentially participate in calls for bids;
- (5) Any other deliberations needed to help the Borrower come to a decision.

## **B. Arranger's tasks when aiding the Borrower in the preparatory phase**

Depending on the specifically negotiated agreements set down contractually in the engagement letter, the Arranger will perform the following main tasks:

- (1) Review the Borrower's debt and capital structure to analyse the type of Euro PP that is best suited to the Borrower's needs (volume, repayment schedule and covenants consistent with foreseeable developments in the Borrower's financial structure, in particular);
  
- (2) Help the Borrower to reach the standards of disclosure and formal presentation needed to satisfy Investor requirements:
  - (a) Assist the Borrower in preparing a presentation of its credit story with regard to best practices on international private placement markets and Investor expectations. This work is vitally important insofar as it is designed to communicate an exhaustive description of the Borrower's credit story to Investors. The demands of this task may vary considerably depending on the transaction, notably if the Borrower has listed financial instruments and if a registration document and regular financial disclosures have already been provided to the market;

In practice, the presentation of the Borrower's credit story could take the shape of:

- i. a Credit Profile
- ii. and/or an Information Memorandum/Prospectus
- iii. and/or a Roadshow Presentation;

The Arranger, which acts as placement intermediary, shall under no circumstances be liable for documents presenting the Borrower's credit story. The nature, form, quality and accuracy of the information are under the sole responsibility of the Borrower, which shall make undertakings in this regard. The Arranger reminds the Borrower of this responsibility, which is covered by a disclaimer that must be provided before approaching any potential Investor;

- (b) Work with the Borrower to set out the placement objectives in an Indicative Term Sheet including size, documentation, price and maturity, as well as the number and type of Investors desired and the proposed execution timetable. These terms are proposed to Investors and may be the subject of negotiations with the Borrower;
  
- (3) Assist the Borrower in selecting partners, including its legal counsel, registrar and agents (as applicable: paying agent, tax agent, security trustee, information agent, facility agent, etc.).

**C. Arranger's tasks in terms of approaching Investors and negotiating the principal terms**

- (1) Identify potential Investors and a strategy for approaching them;
- (2) Establish a possible but non-final timetable for carrying out the issue;
- (3) Make initial contact with potential Investors;
- (4) Sign a Non-Disclosure Agreement with Investors (see point (3), Section A);
- (5) Provide the presentation information referred to in point (2) of Section B to Investors that have signed a Non-Disclosure Agreement (referred to in point (3) of Section A), where applicable through an electronic document management platform such as Debtdomain or Intralinks;
- (6) Provide the Indicative Term Sheet to Investors;
- (7) Organise a meeting or meetings between the Borrower and Investor(s);
- (8) Negotiate the transaction procedures;
- (9) Manage the dialogue between the Borrower and Investors.

#### **D. Arranger's tasks in relation to the legal documentation**

- (1) Regardless of the form of the Euro PP (listed or unlisted bond or loan), negotiate and sign a **Non-Disclosure Agreement** covering the provision to Investors of not (yet) public information<sup>6</sup> (based on the template in **Appendix 2 of the Euro PP Charter**);
  
- (2) For Euro PP deals in the form of unlisted bonds, help in drawing up **Terms and Conditions** and key points for discussion between the Borrower and Investors (using the Template provided in **Appendix 3 of the Euro PP Charter**). The Arranger shall warn the Borrower about the need for consistency between the terms of the future Euro PP and those of existing facilities. The Arranger shall also warn the Borrower about the need to integrate its specific financial features and to provide Investors with a satisfactory level of comfort. When reviewing the Terms and Conditions, the Arranger strives to ensure that this document is consistent with best market standards;
  
- (3) For Euro PP deals in the form of listed bonds on a regulated market (RM) or multilateral trading facility (MTF), provide assistance in drafting a **Prospectus**<sup>7</sup> containing the information required by the Prospectus Directive for a listing on a RM or equivalent information for a listing on a MTF;

It is recommended to submit a preliminary prospectus<sup>8</sup> to Investors as early as possible before the planned transaction commencement date, so as to facilitate their investment decisions (risk factors, terms and conditions of the bonds, etc.);

- (4) For Euro PP deals using the bond format, a **Placement or Subscription Agreement** should be signed between the Borrower and the Arranger or the Investor(s), pursuant to which the Borrower undertakes to issue the bonds, the Arranger undertakes to place them and/or the Investor(s) undertake to subscribe for them, based on a number of representations, warranties and undertakings from the Borrower;
  
- (5) Review all the conditions precedent required for the transaction to go ahead;

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<sup>6</sup> The Non-Disclosure Agreement can be bilateral (between the Arranger and the Investor) or tripartite (among the Borrower, the Arranger and the Investor).

<sup>7</sup> Though it does not provide sufficient information for making an investment decision, the Prospectus describes the Borrower's business, financial statements and risk factors, as well as the terms and conditions of the bonds, thus enabling Investors to substantiate their analysis.

<sup>8</sup> A preliminary prospectus is usual in the case of first-time issuers on the euro market and helps present the company to Investors. It corresponds to the final version of the Prospectus for admission to trading, with the exception of the financial characteristics (coupon, principal amount, maturity, issue price, interest payment dates), on which the informal approval of the competent authority has been obtained.

- (6) Prepare and discuss a detailed **Term Sheet** containing a summary of the main financial and legal terms and conditions of the transaction, based on negotiations between the Borrower, the Arranger and Investors;
  
- (7) Where applicable, assist the Borrower in negotiating a **Paying Agency Agreement** signed between the Borrower and the Paying Agent for the purpose of organising financial flows during the term of the bond (interest payments, redemption, technical procedures for provision of information to investors and procedures for calculating the amounts due, as the case may be).

#### **E. Arranger's tasks with a view to finalising the transaction**

- (1) Carry out **due diligence** on the Borrower, to be determined on a case by case basis depending on Investors' needs and taking account of the specifics of the deal and the Borrower's situation;

As a rule, the Arranger shall use a **Questionnaire** to carry out its due diligence (see template in **Appendix 4 of the Euro PP Charter**);

- (2) Set the issue price with the Borrower in accordance with industry standards and identified interest among Investors;
- (3) Organise signature of the legal documentation;
- (4) Following the settlement of funds, and once the securities have been delivered (bond format) and listed, where applicable, and subject to the Borrower's agreement, draw up and publish a **press release**.

## F. Arranger's tasks with regard to market monitoring

To enable reliable and transparent statistics to be compiled for the Euro PP market, Arrangers will endeavour to provide regular information to specialised financial news providers, such as Dealogic, IFR Thomson and Bloomberg, provided they obtain the Borrower's agreement if the issue is not public, as described below;

The objective is to obtain the Borrower's agreement to provide the greatest possible transparency on the Euro PP's terms (as a minimum: Borrower's name, amount raised, currency, maturity, coupon and specific clauses) with the aim of:

- Promoting the Euro PP market by providing the most complete view possible of amounts raised and market trends,
- Ensuring the visibility and transparency of this new disintermediated market for business financing, and
- Publishing information on Euro PP deals for benchmarking purposes.

On a confidential basis, Arrangers will report all Euro PP deals that they carry out to the Balance of Payments Directorate of the *Banque de France* for statistical purposes, as part of its statutory tasks.

**G. Arranger's tasks during the term of the financing**

Aid the Borrower as required on any question during the term of the Euro PP, as part of the standard long-term business relationship between the Borrower and the Arranger, in accordance with the specific assignment given to the Arranger to this effect within the framework of a new engagement letter.

