

## Notice

# Syndicated lending involving foreign securities

External transactions

## I Issuance and placement of issues

### 1 Reporting requirements for own issues under the Foreign Trade and Payments Regulation (*Aussenwirtschaftsverordnung*)

Direct contractual relationships between the issuer and investors arise during the issuance process only if a foreign issuer uses the institutional own-issue facility. Such an own issue involves direct contracts being concluded between foreign issuers and domestic investors. In the case of direct business dealings with foreign parties, the domestic investors are themselves subject to reporting requirements pursuant to sections 67 and 70 (1) number 1 of the Foreign Trade and Payments Regulation.

### 2 Reporting requirements for issues through financial intermediaries under the Foreign Trade and Payments Regulation

Exactly which reporting requirements under the Foreign Trade and Payments Regulation apply to issues through financial intermediaries depends on the legal structure of the issuing syndicate. For this reason, the following explanations focus solely on the basic variants of an issuing syndicate. As a rule, issuance through financial intermediaries involves several financial intermediaries combining to form a single issuing syndicate. However, direct contractual relationships with the issuer are limited to the syndicate's lead managers, who bear the overall responsibility for performance of the issuance contract.

#### 2.1 Underwriting syndicate

In the case of an underwriting syndicate, the credit institutions participating in the issuing syndicate give the issuer a guarantee that the securities will be sold. The syndicate's lead manager undertakes to buy the complete issue and is subsequently responsible for distributing the tranches among the syndicate members. The lead manager places the total countervalue of the issue at the issuer's disposal. Hence a purchasing agreement is created between the issuer and the lead manager.

This makes the domestic lead manager subject to reporting requirements. It follows that no reporting requirements apply to the domestic members of a syndicate when they acquire tranches from the domestic lead manager for placement in their own portfolios, as this represents a transaction between domestic counterparties.

If an underwriting syndicate includes foreign members, the domestic lead manager must report the acquisition of tranches by foreign syndicate members during the issuing phase as an incoming payment.

If domestic syndicate members acquire an issue directly from a foreign issuer or from a foreign lead manager, they must report the amount of their tranche as an outgoing payment.

If the acquired tranches are placed in the market, the domestic syndicate members must submit reports under the Foreign Trade and Payments Regulation in cases where foreign parties purchase the securities from the domestic syndicate members.

## **2.2 Selling syndicate**

In the case of a selling syndicate, the issuing syndicate takes on the task of selling the issue for the account of the issuer, with the placement risk remaining with the foreign issuer. If the domestic syndicate members place the issue in their own name for the account of the foreign issuer, they must submit a report under the Foreign Trade and Payments Regulation in the amount of the securities sold. If the domestic syndicate members are only responsible for carrying out delivery and payment instructions (placement in someone else's name for someone else's account), they do not have to submit a report. It is the responsibility of the respective domestic counterparties (dealers, end investors) to fulfil the applicable reporting requirements.

## **II Commissions, interest and dividend payments**

Domestic parties must report any commissions and fees they receive in connection with issuing business as well as any interest and dividend payments which they collect for their own account from foreign parties or for their account from domestic parties. No reporting requirement applies to accepting and forwarding paying agency commissions or interest and dividend income for the account of third parties.

Financial institutions may also report incoming interest and dividend payments on foreign issues on behalf of their domestic customers. If they choose to do so, however, they must clearly inform their domestic customers of this in order to avoid duplicate reporting.

### **Information on foreign trade and payments reporting system**

Hotline:	0800 1234 111 (freephone – only available if call is made from a German landline)
Internet:	<a href="http://www.bundesbank.de">www.bundesbank.de</a> under Service/Reporting systems/External sector statistics
Newsletter (in German):	<a href="http://www.bundesbank.de">www.bundesbank.de</a> under Service/Newsletter (category: Meldewesen Aussenwirtschaft)
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