

Dentons DCM Quick Guide to Cornerstone and Anchor Investors

Grow | Protect | Operate | Finance

November 2024

A publicly offered bond issued in the international debt capital markets requires strong demand from potential bond investors in order to achieve the best possible pricing at the desired size for the issuer. Yet, despite the efforts of the underwriting banks and the issuer during the marketing and roadshow process, there is often some residual uncertainty when books open for orders as to the size of the orderbook that will be built. This is especially the case in weaker market conditions. Even in better market conditions, there may be other bond issues competing for investors' cash and attention.

One method that an issuer may use to reduce that uncertainty is to approach certain key potential investors in advance of the bond issue, in order to explore whether they would be willing to act as an "anchor" or "cornerstone" investor in the bond and place an order of a certain minimum size. While more common in the equity than the debt capital markets, where an issuer has a strong relationship with a potential investor who wishes to support the issuer, a cornerstone or an anchor investment in a bond issue may prove useful in helping the issuer and the underwriting banks get a head start in building the orderbook and signalling that there exists support for the transaction and the issuer.

The term "cornerstone investor" is generally used in a DCM context where the investor makes a firm commitment in advance of the public marketing process (i.e. prior to the announcement of the deal roadshow and distribution of the preliminary prospectus/offering document), typically through a short-form investment agreement, to acquire securities in the offering, and would usually be disclosed to other investors during the market process through disclosure in the preliminary prospectus/offering document. Cornerstone investors are in our experience very rare in standard debt capital markets transactions.

The term "anchor investor" is generally used in a DCM context with respect to an investor who places a large order during the marketing process, but without any separate investment agreement, formal commitment or pre-arrangement, despite potentially having had discussions about the proposed bond issue with the issuer in advance of the public marketing process. Anchor investments are usually not specifically disclosed if the investor simply places an order in the orderbook alongside other investors, after the orderbook has opened, without any pre-agreement, commitment or pre-arrangement.

However, there are a number of considerations that must be borne in mind in relation to a potential cornerstone or anchor investment, several of which are discussed below.

Market Abuse Regulation

In approaching a potential investor as to whether they would be willing to act as a cornerstone or an anchor investor, prior to the announcement of the deal roadshow, an issuer needs to be conscious of its obligations under the Market Abuse Regulation (**MAR**, the EU or UK version as applicable) and/or any other applicable market abuse law or regulation applicable to the issuer (if MAR is not applicable).

Assuming that MAR is applicable to the issuer, the issuer will need to consider whether, in approaching the potential investor, the issuer may be disclosing information that is, or may become, inside information, in relation to the issuer or the proposed bond transaction and, accordingly, whether: (i) to approach the potential investor as a formal “market sounding” exercise pursuant to MAR; or (ii) not to rely on the MAR safe harbour for market sounding but protect itself by seeking an appropriate non-disclosure agreement prior to entering into any discussions with the potential investor. Please refer to our [Quick Guide to MAR issues in DCM transactions](#) for further information.

In either case, the potential investor is most likely going to have to agree to be restricted from trading any securities of the issuer that are in scope of MAR until the information they are being given about the potential bond is either stale or public. Many professional investors are not willing to receive market soundings which may contain inside information due to the required restrictions on trading, and thus they will also not consider being brought into discussions about being a cornerstone or an anchor investor.

Equal treatment of investors

Cornerstone/anchor investors may be given access to a “pink” (advanced draft) version of a preliminary prospectus, or have more extended interactions with management than in customary roadshow meetings. It is important that the cornerstone/anchor investor is treated equally when compared to the other investors in terms of the information on which they are basing their investment decision.

Where, for example, the issuer provides the cornerstone/anchor investor with access to additional due diligence materials in order for the cornerstone/anchor investor to make their decision to become a cornerstone/anchor investor, those additional diligence materials should be consistent with the information disclosed in the preliminary prospectus/offering document. The issuer must be able to defend the position that all the material information required for the investment decision is included in that preliminary prospectus/offering document (i.e. that the cornerstone/anchor investor is not making its investment decision on the basis of information that is different to, or inconsistent with, the information to which the other investors have access in the preliminary prospectus/offering document).



Identification of the potential cornerstone or anchor investor in the preliminary prospectus/offering document

Where cornerstone or anchor investment in DCM transactions does occur, it is often by international development institutions which have a mandate to promote investment in a region rather than purely private-side professional investors. Occasionally, a shareholder, joint venture partner or other private investor may act as a cornerstone or an anchor investor in a DCM transaction.

While a pre-agreed, binding cornerstone investor arrangement will require consideration of whether some disclosure in the preliminary and final prospectus is required, even an anchor investment of a material size where the investor has only placed an order alongside other investors in the normal marketing/bookbuilding process for the bond and has not entered into any formal, binding or pre-arranged commitment to do so in advance of the opening of the orderbook will generally not require any disclosure of the anchor investor in the preliminary or final prospectus. In addition to assessing whether the anchor investment requires any disclosure, in each situation the adequacy of the liquidity/secondary trading market risk factor should be considered, to ensure that the issuer and underwriting banks are comfortable that the relevant risk factor would address a potential risk of the concentration of holdings in the bond.

Where there is a cornerstone investor (or a sufficiently certain, pre-arranged anchor investor) and disclosure is being contemplated in the preliminary prospectus, there is often sensitivity from the cornerstone or anchor investor about whether they will be publicly named and identified as the cornerstone/anchor

investor, or whether it would be sufficient to identify the investor as, for example, “an international development institution”, “international public financial institution” or “an existing stakeholder in the issuer”.

Whether it is material to the other bond investors to know the actual identity of the proposed cornerstone/anchor investor will be determinative as to whether their identity should be disclosed in the prospectus/offering document. This will need to be determined on a case-by-case basis but, in broad terms, the involvement of an existing stakeholder in the issuer may be more likely to require disclosure. For example, an existing shareholder of the issuer also becoming a major bondholder in the issuer may further entrench any influence or control such a stakeholder has over the issuer. Conversely, investment by a wholly new investor is less likely to require that investor to be specifically named in the preliminary prospectus and, if disclosure is considered required, is more likely to lead to a generic disclosure rather than specifically naming the investor.

In certain situations, especially if the potential cornerstone or anchor investor is a key stakeholder in the issuer or where there is informal reliance by the issuer on the potential investor, the underwriting banks advising an issuer may advise that, from a marketing perspective, it would be beneficial for the identity of the cornerstone or anchor investor to be disclosed, as it will demonstrate the investor’s ongoing support for the issuer and assist in the marketing effort for the bond.

Prospectus/offering document disclosure about the cornerstone/anchor investment

The starting point for whether any specific disclosure is required to be included in a preliminary prospectus/offering document, or otherwise at pricing (either in a pricing term sheet (for a Rule 144A/Regulation S transaction) or in the final prospectus/offering document) in relation to a cornerstone or an anchor investment will be the relevant rules applicable to the preliminary prospectus/offering document based on whether the bond offering is subject to the Prospectus Regulation (UK or EU version) or the rules of a stock exchange's multilateral trading facility. Assuming the Prospectus Regulation is applicable, the key question is whether the disclosure of the cornerstone/anchor investment is "necessary information" that is material to an investor for making an informed assessment of the issuer and the securities (i.e. the Article 6(1) "necessary information" test).

This is likely to be a function of the following factors:

- (a) Significance of the investment in the context of the overall bond issue size. For example, a cornerstone/anchor investment that may amount to 30% of the issuer's overall intended bond target size will clearly be more material than a cornerstone/anchor investment of only 5% of the target size.
 - A large cornerstone/anchor investment as a percentage of the bond may impact the rights attaching to the securities, in particular in relation to the potential impact on bondholder voting on any future amendments to the securities or enforcement actions. Key here will be (i) whether the bonds held by the relevant cornerstone or anchor investor would be counted as "outstanding" for the purposes of bondholder meeting quorum and voting; and (ii) if the investor's bonds will still count as outstanding, will they hold a stake that could block any amendments to the bonds proposed by extraordinary resolution.
- (b) The identity of the cornerstone/anchor investor and whether that is relevant in relation to the prospects of the issuer (e.g. indicating increasing reliance on or control by a particular stakeholder of the issuer, or continued strategic support from a core stakeholder).
- (c) The terms on which the cornerstone/anchor investment is made.
 - In addition, a large cornerstone/anchor investment may have more immediate impacts on the potential liquidity of the security, as cornerstone/anchor investments may also have terms governing the ability of the cornerstone/anchor investor to dispose of their investment.
 - The ability of the issuer to raise funding in the market at the required price and size of the transaction (that is, the underlying market demand for the bond absent the cornerstone/anchor investment) may also be material information to investors. If the issuer is relying upon significant or material amounts of pre-committed cornerstone investor support or sufficient certain pre-arranged anchor investor support to raise funding at the price and size it intends, disclosure may be required, to avoid suggesting a misleading level of market demand for the issuer's credit at the relevant price and size.¹
 - Is the cornerstone/anchor investor free to dispose of the bonds or is disposal subject to restrictions? If the investor is not free to dispose or the disposal is subject to restrictions, then that suggests that the cornerstone/anchor investment may have an impact on potential supply, and therefore liquidity and potentially price, of the bonds in the secondary market.
 - Is the cornerstone/anchor investment conditional (e.g. subject to other contracts being entered into or other events taking place, or subject to the bond achieving certain pricing (i.e. yield) or sizing terms)?

1. Several considerations are relevant here, including if the cornerstone or anchor investor is acting purely as a "price-taker" and not a "price-maker" (i.e., the investor will consider purchasing only at the price that is set by the other investors in the bookbuilding process). If the investor is strictly a price-taker, that would be an argument against the necessity of disclosure, provided that the amount of the investment is not so large as to give a misleading impression of demand for the issuer's credit at the relevant "taken" price.

- (d) Whether the investor has made any binding pre-commitment to invest ahead of the public marketing of the bond (i.e. a “cornerstone investor”) or whether there is a sufficiently certain pre-arrangement of an anchor investment. If the anchor investor is not committed and their decision to place an order in the orderbook is completely discretionary, that is a strong argument against the need for disclosure.
- (e) Whether the underwriting banks and the issuer wish to speak about the cornerstone investment or a potential anchor investment during the marketing/roadshow for the bond and/or in the launch announcement for the bond (for example, because it indicates a key stakeholder’s continued strategic support for the issuer). If so, then this indicates that there should be some disclosure in the preliminary prospectus/ offering document about the possibility of such an investment, so that the underwriting banks and the issuer can use the disclosed information as part of the marketing messaging for the bond.

Overall, apart from cornerstone investment situations, which are very rare in debt capital markets transactions, where anchor investments arise, the transaction participants often come to the view that no disclosure is required, especially where a price-taking anchor investor is only going to be placing an order alongside other investors after the opening of the orderbook, with no pre-commitment to do so, and provided that the usual allocation policies and procedures of the issuer and the underwriting banks will be followed.²

While every case needs to be considered on its individual merits, it is therefore usually only in binding cornerstone investment situations, or sufficiently certain cornerstone or anchor investments which are of a material size (as a percentage of the intended bond issuance), that specific disclosure of the cornerstone or potential anchor investment will be required in the preliminary prospectus/offering document.

In those cases where it is determined that some level of disclosure is required, based on the level of commitment/certainty of the investment, two approaches are generally followed.

- (a) Where there is an identifiable commitment or sufficiently certain pre-arrangement, disclosure may include:
- a general outline of the potential size of the investment. Disclosure that the cornerstone/ anchor investment is “subject to certain conditions” should be sufficient in most cases to address any conditionality in the potential investment, although legal advice should always be sought from the counsel drafting the prospectus disclosure on this point;
 - a general outline of any restrictions on disposal (or lack thereof) of the bonds by the cornerstone/anchor investor, as this may impact the future liquidity of the bond; and
 - disclosure of either the identity of the investor or the type of investor (see “Identification of the potential cornerstone or anchor investor in the preliminary prospectus/offering document” above).
- (b) Where there is sufficient uncertainty about the likelihood and the level of the commitment, but the potential size of the investment is significant, there is likely to be:
- no express mention of a cornerstone or anchor investment is made in the preliminary prospectus/offering document (or in any launch announcements), or it may be mentioned very tentatively³; and
 - an expansion of the liquidity risk factor to flag that, if a large order is accepted from such an investor (or if a small number of cornerstone or anchor investors acquire a significant portion of the offering), secondary market liquidity could be adversely affected by that investment.

2. If there is a pre-agreement or pre-arrangement that a particular investor will receive a preferential or guaranteed allocation, this will likely need to be disclosed.

3. For example: “The issuer has received expressions of interest from international public financial institutions, who may elect in their discretion to place orders to participate in the offering as anchor investors on the same pricing terms as all other investors.”

In addition, if the bond is being offered on a Rule 144A/Regulation S basis, there may be more sensitivity about ensuring full disclosure from a 10b-5 liability perspective from US counsel. Even if disclosure is not considered necessary in the preliminary prospectus/offering document at the commencement of marketing, it should be considered whether disclosure should be made in the pricing term sheet at the “time of sale” for US securities law purposes, as well as in the final offering document.

If it is determined that specific disclosure needs to be made in the preliminary prospectus/offering document, then it would often be found in the “Subscription and Sale” section of the document (sometimes referred to as the “Plan of Distribution” section) as well as, where there may be a material impact on liquidity or the secondary trading market for the bonds, in relevant risk factor(s). Therefore, if the bond is to be issued under a programme and disclosure of the cornerstone/anchor investment is required, prospectus/offering document disclosure by means of a supplement or a drawdown supplement may be necessary. Any required supplement may impact the timetable for the transaction.

The issuer should run the proposed disclosure past the cornerstone investor or potential anchor investor to ensure that it does not object to the disclosed

information and that the proposed disclosure would not cause it to revoke the intended cornerstone/anchor investment (as the issuer is liable for the information disclosed being accurate).

Where disclosure is included in the preliminary prospectus/offering document, it may be necessary to adjust the disclosure wording between the preliminary prospectus/offering document and the final prospectus/offering document (and the pricing term sheet for a Rule 144A/Regulation S transaction), to reflect the fact that certain conditions to the cornerstone/anchor investment have been met (e.g. a pricing condition or a size condition for the bonds), or otherwise to reflect the final parameters of the investment.

This Quick Guide is a high-level overview of a complex topic and is limited to the context of a senior, unsubordinated bond issue by a corporate in the European international debt capital markets, offered to professional investors and under an exemption to the registration requirements of the US Securities Act of 1933 (as amended), on either a Regulation S or a Rule 144A/Regulation S basis. Additional points not set out above may also be relevant depending on the individual circumstances of the issuer and the individual characteristics of the bond transaction.

Please reach out to any of the contacts if you would like to discuss the issues raised in this Quick Guide further.



Key contacts



David Cohen
Partner, London
D +44 20 7246 7535
david.cohen@dentons.com



Nick Hayday
Partner, London
D +44 20 7246 7516
nick.hayday@dentons.com



Alex Roussos
Partner, Dubai
D +971 4 402 0895
alex.roussos@dentons.com



Neil Dixon
Partner, London
D +44 20 7246 7522
neil.dixon@dentons.com



Cameron Half
Partner, London
D +44 20 7246 7175
cameron.half@dentons.com



Victoria Wyr
Partner, London
D +44 20 7320 6340
victoria.wyr@dentons.com



David Ferris
Managing Practice Development
Lawyer, London
D +44 20 7320 6353
david.ferris@dentons.com



© 2024 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see [dentons.com](https://www.dentons.com) for Legal Notices.