GOVERNANCE AND DISCLOSURE GUIDELINES FOR HOUSING ASSOCIATIONS SEEKING FUNDING FROM CAPITAL MARKETS

ABOUT THE INVESTMENT ASSOCIATION

The Investment Association is the trade body that represents UK investment managers, whose 200 members collectively manage over £5.7 trillion on behalf of clients.

Our purpose is to ensure investment managers are in the best possible position to:

- Build people's resilience to financial adversity
- Help people achieve their financial aspirations
- Enable people to maintain a decent standard of living as they grow older
- Contribute to economic growth through the efficient allocation of capital

The money our members manage is in a wide variety of investment vehicles including authorised investment funds, pension funds and stocks & shares ISAs.

The UK is the second largest investment management centre in the world and manages 37% of European assets.

ASSET MANAGERS AND THE HOUSING ASSOCIATION SECTOR

In recent years Housing Associations have increasingly turned to the debt capital markets to meet their long-term funding needs. Since 2012 Housing Associations have raised over £14.4bn of debt in capital markets, to supplement £10.7bn raised through banking financing[1]. This growing reliance on capital markets for funding is set to continue.

Asset managers, on behalf of their insurance and pension fund clients, play a key role in providing this funding to the sector. For investors seeking to match their assets and their long term liabilities, Housing Association debt is an attractive asset class due to:

- the strong asset base;
- predictable income streams;
- government support through housing benefit and regulation;
- a relatively limited range of alternative long-dated sterling opportunities; and
- high ratings, typically between AA1 and A3.

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[1] Housing and Communities Agency Quarterly survey of private registered providers, https://www.gov.uk/government/collections/quarterly-survey-of-private-registered-providers

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Given the changing profile and funding needs of the sector and the favourable pricing and capital that institutional investors are able to provide, the relationship between institutional investors and Housing Associations has become more important. The key to harnessing this relationship is greater transparency and visibility on how Housing Associations are performing and how they are governed.

Transparency is essential for issuers of securities in capital markets as this has an impact on investor confidence, impacts pricing in secondary markets, and affects the ability of issuers to attract a broader investor base. In addition, there are regulatory requirements that require certain disclosures to be made on a timely basis.

The Investment Association, acting on behalf of its members as investors in Housing Associations, has therefore worked to produce Disclosure Guidelines, setting out investor expectations on certain disclosures for Housing Associations seeking funding from capital markets.

Most of the information investors are seeking will already be held within any Housing Association that has listed debt securities or is seeking funding in debt capital markets, so the only shift that is needed is to ensure that this information is easily accessible and publicly available.

DISCLOSURE TO INVESTORS

Investors are keen to see greater transparency from Housing Associations as to performance and governance. However, just as important as the disclosures investors are looking for, is how those disclosures are made. Clear, consistent channels of communication between Housing Associations and investors are of critical importance, particularly since the communication of information from issuers to investors is subject to certain regulatory requirements.

There are concerns that in the past investors have been inadvertently made insiders by Housing Associations which, unaware of the requirements relating to insider information, have disclosed material information to some investors and not others. As a result the investor who has been in receipt of the information has been legally barred from trading any security until the relevant material information is made public.

To ensure that all disclosures to investors are made in a proper manner, it is important to ensure that there is an explicit channel for communication with investors.

REGULATORY BACKDROP

Under the Market Abuse Regulation (MAR), an EU-wide framework for tackling both insider dealing and market manipulation which applies to all securities admitted to trading on a trading venue in the EU, improper disclosures can constitute market abuse. The FCA considers the following to be improper disclosure:

- Disclosure of inside information by the director of an issuer to another in a social context; and
- Selective briefing of analysts by directors of issuers or others who are persons discharging managerial responsibilities[2].

Article 7 of MAR defines inside information as "*information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial*

[2] FCA Handbook, MAR 1.4 https://www.handbook.fca.org.uk/handbook/MAR/1/4.html?date=2016-06-17

instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments."

This could include information affecting:

- The assets and liabilities, performance or expectations, financial condition or business of the company;
- Major new developments in the company's business; or
- Information previously disclosed to the market.

Our Recommendations:

Housing Associations should:

- have an investor relations officer or a key contact person to manage the process through which they engage with investors.
- hold regular bondholder update calls to give investors the opportunity to ask questions.
- publish all relevant information and key disclosures on a dedicated part of their website such as an "investor relations" page which can act as a repository for all information investors would like to see.
- disclose material information as soon as possible once management becomes aware of it, via a Regulatory Information Service (except in certain conditions – see below). Only once officially announced in this way should it then be published on the Issuer's website.
- consider offering investors the opportunity to sign up to distribution lists and/or email alerts that promptly notify investors of new reports and announcements.

There are instances where a Housing Association may delay the publication of inside information. To do so, all of the following conditions should be met[3]:

- immediate disclosure is likely to prejudice the legitimate interests of the issuer;
- delay of disclosure is not likely to mislead the public; and
- the Issuer is able to ensure the confidentiality of the information.

In these circumstances, it is important to:

- maintain an "insider list" of all those who hold inside information; and
- to inform the regulator that the disclosure of information has been delayed and provide a written explanation of how the conditions set out above have been met.

The Investment Association recommends that Housing Associations seek legal advice to ensure that they are meeting all their obligations under the Market Abuse Regulation.

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[3] Article 17, Market Abuse Regulation http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0596&from=EN

FINANCIAL REPORTING

Investors use the annual reports and accounts, as well as other performance data, to monitor the credit risk that they are exposed to by lending to individual Housing Associations. It is therefore important that they receive this information within a reasonable timeframe.

REGULATORY BACKDROP

The FCA Handbook's Disclosure and Transparency Rules (DTR) set out the standards that issuers of equity and retail debt must adhere to as part of their ongoing disclosure requirements. Housing Associations only issue wholesale debt securities and are exempt from the rules. Nonetheless, investors consider the DTR to be standard market practice.

Housing Associations should consider the Housing Statement of Recommend Practice (SORP), which is issued by the National Housing Federation and provides guidance on accounting standards for social housing providers in the UK[4]. Where relevant housing associations should also comply with the ESMA Guidelines on Alternative Performance Measures.[5]

Our Recommendations:

Housing Associations should:

- make public the annual report and accounts at the latest four months after the end of each financial year.
- make public half-yearly accounts covering the first six months of the financial year.
    - The half-yearly financial report should be made public as soon as possible, but no later than three months after the end of the period to which the report relates.
- ensure that the annual report and accounts and half-yearly financial accounts remains available to the public for at least ten years.
- publish on a regular basis updates on their key performance indicators, and relevant information on the secured assets for all types of financial security.
- to the extent possible, publish a statement on how they are in compliance with any relevant covenants.

Annex 1 sets out in more detail the information that investors are seeking with regard to performance reporting and secured asset disclosures.

GOVERNANCE

Investors expect Housing Associations, as issuers on capital markets, to have established and defined governance structures, as these structures provide the means for effective management of the long-

[4] Housing SORP 2014, http://www.housing.org.uk/resource-library/browse/housing-sorp-2014-statement-of-recommended-practice-for-registered-social-h/
[5] ESMA Guidelines on Alternative Performance Measures, https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf

term strategy of the organisation. The desired structure can be found with reference to one of the corporate governance codes which a Housing Association can choose to subscribe to, either the **NHF's Code of Governance**, or the **FRC's UK Corporate Governance Code,** which applies to wider participants of capital markets.

Investors need to be able to understand the workings of the Board and how the Board carries out its responsibilities, and Housing Associations should therefore report to investors on their governance structures and how they comply with their chosen Code.

Investors recognise that the mutual and social purpose of Housing Associations may lead to areas of deviation from the Codes' provisions. The Codes both operate on a "comply-or-explain" basis. Therefore areas where a Housing Association's structure differ can be accommodated where they are justified with a clear explanation.

Our Recommendations:

Housing Associations should:

- state in the Annual Report how their governance structures comply with the Code which they follow.
- have a defined structure of Board responsibilities and detail in the Annual Report how these responsibilities are divided between committees.
- provide investors with a clear breakdown of any group structures in the Annual Report and on the website, detailing the level of control of the parent Housing Association over any subsidiaries.
- have a standardised and transparent selection process for board members.
- publicise the appointment of any new directors.
- Include in the Annual Report the details of the tenure of existing Board members and how their individual skills fit with the strategy of the Housing Association.
- schedule at least annually an opportunity for the Board to evaluate their own performance, and whether they have the right mix of skills to approach the challenges they face.
- have appropriate succession plans in place for the refreshment of the Board.

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ANNEX 1

PERFORMANCE REPORTING

- Issuers should publish on their website, on a regular basis, an update of Key Performance Indicators. These should include:
    - Void/vacancy rates
    - Average time to re-let vacant properties
    - Rent arrears levels, both in absolute and as a percentage of receivable rent levels, by 1+/30+/60+/90+ on a contractual basis.
    - Losses due to repossession.
    - Customer satisfaction.
    - A breakdown of rent levels by property type (social housing/affordable/market value) and location.
    - Performance of other commercial activities.
- Issuers should also publish details of construction. These should include:
    - Size and value of undeveloped land and property
    - Properties under development
    - Properties sold or part-sold
    - Inventory of unsold properties

SECURED ASSETS DISCLOSURES

- Issuers should publish on their website relevant information on secured assets for all types of financial security. Such disclosures should include:
    - By pool:
        - Details of encumbered properties
        - The last valuation, and the date of the next valuation. Securities should be revalued every year.
        - Any changes in properties in the pool.
    - Details on the volume and value of unencumbered properties, and their ability to be charged.