

Clarifications on the processing flow for consent-related events

Status: FINAL[[1]](#footnote-1)

Preparation date: October 2012

Update date: March 2013

Update. Impl. date: November 2014

Author: SMPG - BL

1. Generic considerations

Types of Consents

A *consent* is, by definition, a request normally performed by the issuer to the holders on specific topics linked to the life of the company or to the terms and conditions of the company’s issued securities. Different types of *consents* exist on the market. Here are the most common types of consents:

1. Change in the terms and conditions of a security. This often occurs for bonds and structured products for which a clear ‘terms and conditions’ document exists. For certain types of modification, a consent of the holder is requested (see scenario 1a below)
2. Bonds can be declared due and payable. See scenario 1b and more details in the *specifics of the XS market* chapter.
3. Consent requested to the holder in the context of specific events like exchange offers or tenders. This consent has very often impacts on the receipt of potential fees and also on the deadline. See scenario 2 and more details in the *specifics of the US market* chapter.
4. In Korea, a common scenario is that issuers do not organise a general meeting to request the opinion of their holders and allow the holders who did not agree with the proposals to sell the securities to the issuer company via a repurchase offer (BIDS) event (the other holders cannot participate to the second event). See scenario 3.

General logic for event usage

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Scenario** | **Target Market** | **Description** | **B:Bond / S:Shares** | **ElectronicInstruction** | **Physical Meeting** | **Stand Alone** | **OriginatorI: Issuer / T: Third Party** | **CAMV** | **CAEV** | **Options** | **Fee on Election**  |
| **1a** | XS | Change in Terms (+/-80% of XS consent) | B | Y | N | Y | I | VOLU | CONS + Term ind. | CONY,CONN, NOAC | Y (SOFE)/N |
| **1b** | XS | Due & Payable (+/- 20% of XS consents) | B | Y | N | Y | TP | VOLU | CONS + D&P ind. | CONY,CONN, NOAC | N |
| **2** | US | Consent for EXOF, TEND, BIDS | B+S | Y | N | Y/N | I | VOLU | TEND,EXOF, BIDS + ADDB/CONS | CTEN,CEXC,CONY,CONN, NOAC | Y (SOFE) majority |
| **3** | KR | Consent for buyback offer for dissenters | S | Y | N | N | I | VOLU | CONS (followed by BIDS –VOLU) | CONN,NOAC | N |
| **4** | All | Bond Holder meeting | B | Proxy | Y | Y | I | VOLU | (new) BMET | Meeting Options+ Abstain | N\* |

When a consent is required on a specific event (e.g. consent on a tender/repurchase offer or exchange offer), the event type of the specific event should be used. In order to clarify that a consent is required for this event to actually take place, the use of the additional business process CONS is recommended in sequence D.

E.g.

|  |  |
| --- | --- |
| Tender and ConsentSeq A22F::CAEV//TEND (Tender and Consent)22F::CAMV//VOLUSeq D22F::ADDB//CONS | Exchange and ConsentSeq A22F::CAEV//EXOF (Exchange and Consent)22F::CAMV//VOLUSeq D22F::ADDB//CONS |

For Consent Tender/Exchange Events - account holders who elect to Take No Action, will have no impact on their holdings. When the Consent and Tender/Exchange Event is granted, holders who elected to Consent and Tender/Exchange are impacted based on the terms of the option. Holders who only granted the consent will not have their shares surrendered. However, they are bound to the changes of the consent.

If the offer becomes compulsory, the tender/exchange itself becomes mandatory, holders who elected NOAC or CONN will therefore be subject to a second new MANDatory event.

The event type CONS will remain applicable whenever the issuer is not requiring to consent on a specific event but requesting for example a change in the terms and conditions of a bond.

The SMPG agrees that the ISO definition of the CONS event is therefore not appropriate and decides to have it changed as follows:

*~~Procedure that aims to obtain consent of holder to a proposal by the issuer or a third party intended to progress an event to the next stage. This procedure is not required to be linked to the organisation of a formal meeting. For example, consent to approve a plan of reorganisation for a bankruptcy proceeding.’~~*

to

*‘Procedure that aims to obtain consent of holder to a proposal by the issuer or a third party without convening a meeting. For example, consent to change the terms of a bond.’*

E.g.

|  |
| --- |
| Consent changes in the terms of a bondSeq A22F::CAEV//CONS22F::CAMV//VOLUSeq D It is **NOT** recommended to repeat CONS in the ADDB~~22F::ADDB//CONS~~  |

In the case of bondholder meetings a specific event type should (to be requested by SMPG) be used in order to have a clear distinction with the shareholder meetings on one hand and the consent done on the bonds on the other (e.g. scenario 1a and 1b). The bondholder meeting is thought to be so specific that it is worth having it represented as a separate event. This approach was also agreed at the Proxy Voting subgroup of the SMPG.

In case there are solicitation fees or early solicitation fees, this information is at the option level. This is typically applicable to CTEN/CEXC and CONY options.

Generally, the deadline on an early solicitation option is before the deadline on the CTEN or CEXC options.

The code that would typically bused to represent this solicitation fee is

|  |  |  |
| --- | --- | --- |
| SOFE | Solicitation Fee Rate | Rate of the cash premium made available if the securities holder consents or participates to an event, for example consent fees or solicitation fee. |

NB: Note this is not to be confused with INCE (Third Party Incentive Rate) that is not distributed to the holder but rather to a third party in the chain (see ISO definition).

1. Specifics of the XS market

Once a security is declared in Default, it is quite usual to ask customers whether they would like the bond to be declared *Due & Payable*. This is done at Trustee request to speed up the process of the default. In this specific case the CONS events can also be used.

In order to allow a distinction between scenario 1a and 1b the smpg will request a new indicator in the sequence D.

NB1: As this is often performed at the request of a Trustee the notion of ‘third party’ is kept in the definition of the CONS event.

NB2: additional information: a typical necessary quorum can be around 20 or 25 per cent of nominal amount outstanding, as defined in the Terms and Conditions of the Notes. In such a case, the bonds will be officially declared due and payable and the Trustee will take action against the issuer and discussions and procedures will be initiated for ‘potential restructure’.

It is possible to have a CONS before a meeting to know what noteholders think (for example: Lehman Brothers)

The main difference(s) between CONS and XMET are :

CONS: only electronic voting

 Option Abstain not available

 Different % of quorum may be required vs XMET

XMET: allow physical attendance for the voting

 Or proxy voting

 Option Abstain available

 Different % of quorum may be required vs CONS

1. Specifics of the US market

There are conditions whereby the account holder can consent with a fee or consent without a fee. These conditions are represented by different options. Consent with a fee would typically have an earlier deadline.

What are the options to be used for Tender and Consent and Exchange and consent?

CAEV//TEND or EXOF

CAMV//VOLU

Options:

CTEN – Consent and Tender or CEXC – Consent and Exchange

CONY – Consent Granted (request to add to EIG)

CONN – Consent Denied

NOAC – Take No action

• What is the difference between CONN and NOAC?

CONN – holder actively denying the consent

NOAC – holder is not taking any action (neither deny or accept)

• What is the difference between CEXC/CTEN and CONY?

CEXC and CTEN – the holder is agreeing with the consent and surrender of securities.

CONY – the holder is only agreeing with the consentbut retaining its holdings - not Tendering or exchanging).

Option CONY is also provided with option CEXC in case restrictions need to be lifted before the exchange.

• What event can occur after the offer becomes compulsory?

The tender/exchange becomes mandatory. Holders who elected NOAC or CONN will be subject to a second event (MAND) that will be usually a merger (equities) or a tender (fixed income).

1. The final document will be updated in Q4 2013 upon results of the SR2014 maintenance (codes, etc.) [↑](#footnote-ref-1)