



EIX Primary and Secondary Markets

P1: Pilot Rules May 2019

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Introduction

Estates and Infrastructure Exchange (EIX) is a multilateral trading facility based in the City of London. It is the first investment exchange globally to focus exclusively on infrastructure and real estate-related Project Bonds.

A 'Pilot' is a firm that is authorised in the UK to arrange investment instruments for placement with Professional Investors. EIX will only accept bonds onto the Primary Market that have been arranged by a recognised Pilot.

These **Pilot Rules** set out the eligibility, requirements, obligations and responsibilities for Pilots. These rules should be read in conjunction with the **Disclosure Rules**.

Part One: Pilot role and qualifications

1 Eligibility criteria

- 1.1 Pilots are firms that work with Issuers to structure infrastructure and development projects and prepare new Project Bond issuances for introduction onto the EIX Primary Market for funding.
- 1.2 Pilots must be authorised in the UK to arrange bonds for placement with EIX's professional investors. To be authorised in the UK, the Pilot firm must appear on the FCA Register with permission to 'Arrange (bring about) deals in investments'.
- 1.3 In order to be a Pilot, the following eligibility criteria should be met:
- Be a firm or a company as individuals are not eligible;
 - Have practiced corporate finance for at least the last two years
 - Have acted on at least one Relevant Transaction during that two-year period
 - Employ at least two Qualified Executives
 - Evidence to EIX that the Pilot has appropriate financial and non-financial resources and will comply with these Pilot Rules.
- 1.4 EIX may, at its sole discretion, waive the requirement for the applicant firm to have a two-year track record and one Relevant Transaction where it determines that the applicant Pilot has highly experienced Qualified Executives with experience in other firms.
- 1.5 When reviewing a Pilot application, EIX will consider the following factors:
- Whether the applicant is appropriately authorised and regulated;
 - The applicant's general reputation and financial standing; and
 - Whether the applicant or its executives are, and/or have in the past been, the subject of any investigation, disciplinary action, criminal proceedings, conviction or finding of breaches of regulatory duties.

2 Role of the Pilot

- 2.1 To run the Primary Market auction efficiently, EIX has established **Disclosure Rules**. These rules set out the standards and form for the Offering Documents and due diligence requirements. Is the role of the Pilot to ensure these Disclosure standards are met and the bond documentation is structured as required.
- 2.2 A named Qualified Executive (or Lead Arranger) coordinates these activities and the production of documents with the Issuer and third parties. Qualified Executives should ensure all materials meet the thresholds set out in the **Disclosure Rules**.

3 Qualified Executives

- 3.1 A Qualified Executive is a full-time employee of a Pilot who can demonstrate a sound understanding of the infrastructure Project Bond market and has acted for an Issuer on the establishment of a Project Bond within the last five years.
- 3.2 An individual will not be considered for approval as a Qualified Executive by EIX where that person has been subject to disciplinary action or similar by a regulator or law enforcement agency in the context of financial services, corporate finance or similar or has any unspent convictions in relation to indictable offenses.
- 3.3 As part of the Qualified Executive approval process, EIX reserves the right to conduct interviews in order to assess the competence and suitability of the individual. If, as a result of any interview which it conducts, EIX considers that the individual has an inadequate understanding of project finance, market practice, the legal, regulatory or governance framework for project finance or these rules, it will not approve the individual as a Qualified Executive.
- 3.4 Qualified Executive status is a designation which is granted to a Pilot firm denoting those individuals within the firm who are authorised by EIX to manage and introduce new bond issuances onto the EIX Primary Market according to the EIX Primary Market Rules. Qualified Executive status is not an individual status or qualification. A Pilot is responsible for the conduct of a Qualified Executive in respect of its obligations and responsibilities as a Pilot.

4 Relevant Transactions

- 4.1 A Relevant Transaction is:
- A debt transaction requiring a Prospectus or equivalent in any EEA country; or
 - A debt transaction within an EEA country which requires the publication of an offer document (or similar document where it is being affected by a scheme of arrangement).
- 4.2 The debt instrument may be listed on a regulated market (as defined by the Market in Financial Instruments Directive (2014/65/EU) or through a private placement sale.
- 4.3 EIX will not generally consider corporate debt raising as a Relevant Transaction unless there are extenuating circumstances.

5 Fees

- 5.1 There is no fee for the submission of an application to become a Pilot.
- 5.2 There are no fees earned from EIX. Pilots enter into commercial agreements directly with Project Sponsors to provide advisory services.

6 Application forms and documentation

- 6.1 An applicant seeking to become a Pilot must complete and submit to EIX the following documents:
- Pilot application form
 - a Qualified Executive form for each of the applicant firm's approved executives
 - company statutes and the certificate of incorporation or in the case of a partnership, the list of partners and the partnership deed
 - a diagram outlining the group/partnership structure
 - applicants audited accounts for the last three years
- 6.2 EIX reserves the right to request any other information, documentation or confirmations from the applicant as it might require in order to consider or progress an application.

7 Interview

- 7.1 EIX may conduct interviews of some or all of the proposed Qualified Executives put forward by an applicant to ensure that they have sufficient understanding of project finance, market practice and the legal or regulatory framework for project finance, including the EIX Primary Market Rules.

8 Approval

- 8.2 A Pilot applicant will be informed in writing (including by email), of the decision by EIX on whether to approve the applicant or not as a Pilot.
- 8.3 Pilot firms that are approved will be entered onto the **EIX Pilot Register**. Project Bond Applications will only be accepted for consideration if put forward by a Pilot firm on the **EIX Pilot Register**. EIX will undertake a review of the regulatory status of the Pilots on the Pilot Register on an annual basis.
- 8.4 Approved Pilot firms will be provided with a Pilot Account Manager who will act as the main point of contact between EIX and the Pilot.
- 8.5 When a Pilot firm submits a Project Bond Application for consideration, EIX will check the current regulatory approvals for the Qualified Executive leading the transaction on behalf of the Pilot.

9 Appeals

- 9.1 If a Pilot is not approved by EIX, the decision may be appealed by an applicant, but not an individual (within one calendar month).

10 Continuing eligibility

- 10.1 A Pilot and each Qualified Executive should continue to satisfy the eligibility criteria set out in (1).
- 10.2 If EIX has not received a Project Bond Application from a Pilot for more than 12 months, EIX may request information from the Pilot to ensure the Pilot and Qualified Executives remain eligible. This may include interviews of Qualified Executives to ensure a knowledge of Project Finance has been maintained.

11 Change of Circumstances

- 11.1 A Pilot must inform EIX as soon as possible of any matters that may affect its performance or operations during a transaction that has been accepted by EIX onto the Primary Market. This includes:
- change in the Qualified Executive who is leading the transactions;
 - commencement of an investigation by any regulatory body or law enforcement;
 - commencement of any disciplinary action or criminal proceedings which relate to the conduct of the Pilot and/or any of its employees relevant to the work undertaken by the Pilot;
 - the receipt of any conviction or finding of breach of duties to which the Pilot and any of its employees was subject, or any formal warning or disciplinary communication from any other regulatory body or law enforcement authority; or
 - any material adverse change in its financial or operating position that may affect its ability to act as a Pilot.
- 11.2 Should EIX deem a change in regulatory status at the firm or Qualified Executive level to have occurred, a new application may be required.

Part Two: Pilot responsibilities

12 Preparing EIX admission documents

- 12.1 The Pilot is responsible to EIX for advising and guiding Issuers on the commercial, regulatory and governance practicalities of a new Project Bond issuance. This includes the preparation of all documents set out in the **Disclosure Rules**. As part of this, the Pilot will be responsible for undertaking KYC on the Project Sponsor and providing a signed Pilot Declaration Form to ensure this has been done.
- 12.2 A Pilot should allocate at least two appropriately qualified staff to be responsible for each new Project Bond issuance.

13 Proper procedures

- 13.1 A Pilot must ensure that it maintains proper procedures, systems and controls which are sufficient for it to discharge its ongoing obligations under these rules. The Pilot should ensure that its compliance and procedures manual reflects and takes account of the requirements of EIX, where appropriate.
- 13.2 In particular, it must ensure that any members of staff who are not approved as Qualified Executives are properly supervised by a Qualified Executive at all appropriate times in relation to matters relating to the **Disclosure Rules**.

14 Maintenance of appropriate records

- 14.1 A Pilot must retain sufficient records to maintain an audit trail of the key discussions it holds with, advice which it has given to, and the key decisions it had made in respect to the **Issuer** and the structuring and creation of the Project Bond. A Pilot should ensure that it is able (including by keeping appropriate records) to demonstrate the basis for advice given and key decisions taken.

15 Removal of a Qualified Executive

- 15.1 EIX may request the removal of a Qualified Executive from a live transaction if it has been demonstrated by a formal review by EIX that the executive has failed to act with due skill and or care in accordance with these rules or the **Disclosure Rules**.

16 Disciplinary action against a Pilot

- 16.1 If the Pilot fails to address any issues with a Qualified Executive per (15), EIX may consider the Pilot to be in breach of its responsibilities under these rules. Should this occur, EIX may determine that the reputation and/or integrity of EIX has been or may be impaired in which case EIX may take the following action:
- Suspend the placement of the transaction unless it is [-14] days until Primary Market Auction launch;
 - Issue a warning notice;
 - Remove the Pilot from the EIX Pilot Register; and
 - Publish the action EIX has taken and the reasons for that action.

Part Three: Issuance responsibilities

17 Project

- 17.1 The Pilot is responsible for assessing the appropriateness of an Issuer and its Project Bond for fundraising on the EIX Primary Market platform. In meeting this responsibility, the Pilot should usually:
- 17.1.1 ensure it has, or has access to, appropriate knowledge of the Issuer's area of business (including the country of incorporation and operation, and underlying infrastructure class and underpinning technology), using in-house or third-party specialists where necessary to achieve this;
 - 17.1.2 consider the Issuer's sector, project type, project financials, leverage ratio, security, historical performance and other corporate information including thorough completed due diligence;
 - 17.1.3 consider any issues related to the Issuer's country of incorporation and operation and any other issues that may affect its risk profile or appropriateness;
 - 17.1.4 undertake a visit to the applicant's proposed or operating project site(s) and meet directors and all key project directors;
 - 17.1.5 meet or correspond with all main project counterparties including construction contractors, offtake contractors, feedstock and equipment providers and any other parties with significant undertaking in the project; and
 - 17.1.6 ensure sufficient governance and protections can be put in place on behalf of lenders including the segregation of assets and associated revenues into an SPV, or equivalent legal structure.

18 Issuer

- 18.1 The Pilot is responsible for assessing the capability of the Issuer to undertake the project outlined in (17). In meeting this responsibility, the Pilot should usually:
- 18.1.1 Undertake KYC on the Issuer;
 - 18.1.2 Review Directors' CVs;
 - 18.1.3 Test the information provided by undertaking press searches, Companies House checks (or equivalent), speak to suppliers or take up references to ensure third party checks are taken;
 - 18.1.4 Extend these checks to any project consultants that provide core information contained within the **Project Bond Application**;
 - 18.1.5 Analyse any issues arising from these investigations to ensure they do not compromise the assumptions behind of operations of the **Project**;
 - 18.1.6 Consider the project structure and the appropriateness of each named Director against role; and

18.1.7 Consider whether the governance structure of the Issuer is sufficient for the profile of the project.

19 Due diligence

19.1 The Pilot should oversee due diligence on the Project, satisfying itself that a Project Bond is an appropriate vehicle for fundraising and that there are no material issues arising from the Project preparation phase that need to be addressed. In meeting this, Pilots should usually:

19.1.1 Be satisfied that appropriate financial due diligence has been completed and the project's financial model reflects evidence-based assumptions and is computationally sound;

19.1.2 Be satisfied that estimates of project costs and capital requirements are evidence-based and provided by valid third parties;

19.1.3 Be satisfied that all insurances are in place and that policy deductibles are appropriate;

19.1.4 Be satisfied that all underpinning technologies have been tested and validated;

19.1.5 Be satisfied that all project contracts contain the appropriate terms and allocate risk correctly;

19.1.6 Be satisfied that project equity is secured and at an appropriate level;

19.1.7 Be satisfied that any land acquisition and planning consents or warrants are in place;

19.1.8 If a construction project:

- that all construction costs are validated by an indemnified third party;
- that all design plans and construction schedules have been validated;

19.1.9 Where a Pilot uses a third party to undertake due diligence, it should ensure that the firm's Professional Indemnity insurance is of an appropriate level and they are willing to provide a letter of comfort to investors.

20 Project Bond Application

20.1 The Pilot should oversee and be actively involved in the preparation of the Project Bond Application, satisfying itself (in order to be able to give the Pilot's declaration) that it has been prepared in compliance with the **Disclosure Rules**, with due verification having been undertaken. In meeting this, the Pilot should usually:

- oversee and be actively involved in the drafting of the sections of the **Project Bond Application** including the description of the project and risk factors;
- be satisfied that the financial projections and capital drawdown schedules are accurate;
- consider whether any specialist third party reports should be provided as addendums;

- be satisfied that appropriate verification of the Project Bond Application and sign-off by the Issuer has been obtained.

21 Documentation

21.1 The Pilot should oversee and be actively involved in the preparation of the Project Bond documents that will be used as the basis of the Auction and preparations for the Auction. The Pilot will again be required to declare that the Project Bond documents have been prepared in compliance with the **Disclosure Rules**. In meeting this, the Pilot should usually:

- commission a law firm of good repute, in coordination with the Issuer to draft the Project Bond Documents in English law;
- be satisfied with the audited financial model;
- commission an independent technical review undertaken by a consultancy or engineering company of good repute.

22 Project Bond Vetting

22.1 Coordinate the submission of all materials to EIX required to undertake Project Vetting, as specified in the Disclosure Rules.