

The Investment Association Position on Consent Fees

A stable, well-functioning bond market is a critical part of the UK financial market infrastructure, providing capital for issuers and investment opportunities for a broad range of savers and investors. Therefore, it is in the interest of all market participants to develop and maintain practices which promote the fairness and effectiveness of the market, and hence support the broader economy.

In recent years, our members have raised concerns about the use of consent fees to incentivise bondholders to vote in favour of proposed amendments to the terms and conditions of an issuer's debt securities. It is common practice for an issuer to propose that the fee will only be payable to those noteholders that vote in favour of the issuer's proposal.

Although the payment of consent fees in exchange for votes in favour of amendments to the terms of debt securities is not unlawful, The Investment Association and its members consider that this approach breaks one of two principles of fairness.

- If the consent fee is characterised as a 'work fee', bondholders voting for or against will have expended the same resources in making their decision. This includes the time and resources expended in understanding the proposal and the back office time required to process a corporate action. It is expected that such firms will vote, but they may not vote in favour. Therefore, it is unfair to discriminate against bondholders who vote against the proposal.
- Alternatively, if the consent fee is characterised as a 'waiver fee' to compensate for a perceived or acknowledged dilution of the bondholder's rights; the consent fee should be paid to all noteholders as they would be all equally affected if the proposals were to be implemented.

In addition, there are concerns that a 'waiver fee' may result in bondholders agreeing to modifications that they do not support on principle. This is because if they voted against the proposals, the holders would have to forgo the consent fee to the detriment of their clients' interests. As a result, there is a risk that bad market practice can develop into standard market practice at the expense of bondholder rights.

The Investment Association accepts that fees should only be payable in the event that the resolution is passed and only to those bondholders that vote. This will encourage responsible stewardship of bond holdings.

However, it is ours and our members' position that consent fees should be paid to all noteholders irrespective of whether they vote for or against the proposed modifications.