The net capital rule (Rule 15c3-1 under the Securities Exchange Act of 1934) requires syndicate members in a firm commitment underwriting to take a charge to net capital “on each net long and each net short position” contemplated by any open contractual commitment in their accounts. While the Manager (as defined in Section 1.1 of the SIFMA form Master Agreement Among Underwriters) will have information regarding whether there are binding contracts for sale for all of the securities or will know when it has determined not to allocate any unsold securities to the syndicate, in the absence of written notice to that effect, syndicate members may not be able to demonstrate to their regulators’ satisfaction that an open contractual commitment charge can be removed.

Accordingly, SIFMA worked with FINRA staff to develop the template communication set forth below that a Manager in a registered debt offering could send to other members of the syndicate to provide documentation that FINRA deems sufficient for syndicate members to remove their open contractual commitment charge for that offering. Firms can begin updating their procedures at any time to provide for use of this template.

Use of this template is voluntary; each underwriter must make its own determination with respect to the use of or reliance on this template.[[1]](#footnote-1)

Template Communication:

From: [Manager]

To: [Syndicate]

Re: [Full Description of Issuance]

In connection with the above-referenced offering (the “Offering”) of securities (the “Securities”), [insert name of investment banking firm] (the “Manager”) confirms as of the time of this communication that (a) based on such investigation as the Manager deems appropriate, including, as applicable, communications with other underwriters involved in the Offering, the Manager understands that there are binding contracts for sale for all of the Securities not allocated to the syndicate, or (b) the Manager will not allocate any unsold Securities to you and shall be responsible for the open contractual commitment charges in respect thereof.

By: [Billing and Delivery Manager]

1. Because use of this template is voluntary and nothing herein should be construed as suggesting otherwise, market participants may modify or adapt its terms to meet their specific commercial objectives and individual circumstances, subject to review by FINRA confirming that the communication remains sufficient evidence of the end of a syndicate member’s open contractual commitment. This document should not be construed as legal advice, and member firms should seek their own legal counsel before using or relying on it. SIFMA makes no warranties, express or implied, regarding the suitability, accuracy, or completeness of this document for any particular purpose and it expressly disclaims any and all liability arising from the use of, or reliance on, this document. [↑](#footnote-ref-1)