

Korea -- Process for Underwriting Committee Summary

The Korean FSS Standard for Corporate Disclosure Filing which came into effect on August 1st 2024, requires underwriters to provide disclosure through inclusion of, “factors affecting the investment value of securities among the matters discussed in the lead managers’ internal committee (underwriting committee, risk management committee, etc)” (referred to herein as the “Underwriting Committee”) in the Underwriters’ Opinion section of the SRS filing with the FSC. SRS filings are publicly available.

Members of the ECM Committee of ASIFMA have agreed that it is beneficial to have a recommended standard process for underwriting syndicate members to follow in relation to this rule. Below is a proposed process:

1. Each underwriter should aim to conclude its meeting of the Underwriting Committee sufficiently ahead of the SRS filing to ensure the procedures herein can be completed (e.g., 3-5 working days before the SRS filing).
2. Each underwriter should prepare its own summary of its Underwriting Committee meeting.
3. Each underwriter should send its summary to the underwriter consortium’s international and Korean counsel for comment and review (e.g., 2-3 working days before the SRS filing).
4. Korean and international counsel should review each underwriter’s draft summary and advise on any deficiencies from a Korean regulatory perspective focusing on whether there are any material factual inconsistencies and risks that should be considered by the underwriters, considering the public availability of the summary. This review should be completed 1-2 working days before the SRS filing to allow for any changes an underwriter may wish to make.
5. Each underwriter should independently submit its approved summary to Korean counsel for the SRS filing (e.g., 1 working day before the SRS filing).
6. Korean counsel to include the following before the summaries in the SRS filing:

“The section includes summary descriptions of a portion of the work that the underwriters and their advisors undertook to evaluate certain statements being made in [NAME OF DOC]. However, given the broad nature of the diligence that the underwriters conducted in connection with the offering, no summary description could reasonably be expected to capture every aspect of this process. Additionally, this section does not provide, and is not intended to represent, an exhaustive or comprehensive list of the subjects or manners in which the lead underwriters evaluated the statements made in the offering documents or the lead underwriters’ conclusions about those statements. Accordingly, it is not intended, and should not be used, to measure the scope or extent of the underwriters’ work in connection with the offering nor should it be used as a proxy for an investor’s independent decision regarding the investment suitability of the offering.”