

# Appendix A12a

## Product governance (MiFID II) language

*The following language is a form of language to be considered for inclusion in subscription agreements to address the obligation in MiFID II Delegated Directive Art 9.8.<sup>12</sup> This language may need to be amended depending on the facts of the relevant offering and/or the specific product governance functions being carried out.*

March 2020

“Solely for the purposes of the requirements of Article 9(8) of the MIFID Product Governance rules under EU Delegated Directive 2017/593 (the “**Product Governance Rules**”) regarding the mutual responsibilities of manufacturers under the Product Governance Rules[.:]

March 2020

(a) [each of] [the Issuer [, the Guarantor[s]]<sup>20</sup> and]<sup>16</sup> the [[Joint] Lead Manager[s]/[identify Manager(s) who are deemed to be MiFID manufacturer(s)]<sup>21</sup> ([each] [the] a “Manufacturer” [and together “the Manufacturers”]) [acknowledges to each other Manufacturer that it] understands the responsibilities conferred upon it under the Product Governance Rules relating to each of the product approval process, the target market and the proposed distribution channels as applying to the Notes and the related information set out in the [Prospectus/announcements] in connection with the Notes[; and

March 2020

(b) the [Managers] [and the/, the][Issuer[ and the Guarantor[s]]<sup>22</sup> note the application of the Product Governance Rules and acknowledge the target market and distribution channels identified as applying to the Notes by the Manufacturers and the related information set out in the [Prospectus/announcements] in connection with the Notes.”]

March 2020

## Part IV – Language for new issue announcements

*The following language may be used in new issue announcements relating to an offer where the “ICMA1” (professional investors and eligible counterparties (ECPs) only) approach to product governance has been used.*

March 2020

**[MiFID II][and][UK MiFIR] - professionals/ECPs-only [/ No PRIIPs or UK PRIIPs KID]<sup>23</sup>** – Manufacturer target market ([MIFID II][and][UK MiFIR] product governance) is eligible counterparties and professional clients only (all distribution channels). [No PRIIPs or UK PRIIPs key information document (KID) has been prepared as not available to retail in EEA or UK.]<sup>24, 25</sup>

June 2022

*The following language may be used in new issue announcements relating to a **retail/low denomination** offer where the “ICMA2” (retail) approach to product governance has been used.*

March 2020

**[MiFID II][and][UK MiFIR] - retail investors, professional investors and ECPs target market** – Manufacturer target market ([MIFID II][and][UK MiFIR] product governance) is eligible counterparties and professional clients (all distribution channels) and also retail clients ([all / suitability- or appropriateness-based]<sup>26</sup> distribution channels).

November 2021

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|-----|---|------------------|
| 21. | <i>This should include all entities deemed to be MiFID manufacturers in the relevant note offering. This should be considered on a case by case basis and will vary depending on the facts of the relevant offering/which entities are collaborating with the issuer in the creation, development, issue and/or design of the bonds, including when advising corporate issuers on the launch of new financial instruments. In some cases (for example where the Joint Lead Managers are the entities substantively collaborating with the Issuer), it may be appropriate for the Joint Lead Managers to be considered the co-manufacturers.</i>   | November<br>2021 |
| 22. | <i>Include a reference to the issuer and/or any guarantor(s) here where such references are not included in the first sentence (e.g. because the issuer and/or any guarantor(s) are not MiFID regulated entities and do not recognise themselves as manufacturers and therefore falling within the scope of the first sentence).</i>  | March 2020       |
| 23. | <i>Do not include the reference to “No PRIIPs or UK PRIIPs KID” in relation to an issue of bonds that clearly falls outside the scope of the PRIIPs Regulation and UK PRIIPs Regulation. For other legends relating to the PRIIPs Regulation, see Appendix A13 and for other legends relating to the UK PRIIPs Regulation, see Appendix A13b.</i>   | November<br>2021 |
| 24. | <i>Do not include the final sentence for issues of bonds that clearly fall outside the scope of the PRIIPs Regulation and UK PRIIPs Regulation.</i>   | November<br>2021 |
| 25. | <i>Note that DISC 2.3.1(G) in the FCA Handbook contains a cumulative three-limbed test which states: “In the FCA’s view, and for the purposes of the PRIIPs Regulation, a financial instrument is not “made available” to a retail investor where the following conditions are met: ... (3) a denomination or minimum investment of £100,000 applies to the financial instrument, or equivalent amount for a financial instrument denominated in another currency...” The cumulative nature of DISC 2.3.1(G) might mean that there is a risk that the FCA could deem a financial instrument with a minimum denomination of less than £100,000 (including, subject to exchange rates, a financial instrument with a minimum denomination of €100,000) to be “made available” to UK retail investors, even if the offer document relating to it contains a legend prohibiting sales to UK retail investors and the issuer has taken reasonable steps to ensure the offer is directed only to professional clients or eligible counterparties. DISC 2.3.1(G) was introduced into the FCA Handbook on 25 March 2022 but is subject to the DISC TP 1 transitional provisions until 31 December 2022.</i> | June 2022        |
| 26. | <i>Include the latter option for certain EMSA complex bonds.</i>  | March 2020       |