

Appendix A13

Selling restrictions and legends (EEA PRIIPs Regulation, EEA Prospectus Regulation)

- 1.5** The Prospectus Regulation public offer selling restriction reflects the requirements of the Prospectus Regulation. The international capital markets law firms that helped the ICMA prepare these selling restrictions believe that they are appropriate for most MTN programmes and standalone debt issues in relation to which offers in any EEA Member State may be made. In addition, it should be noted that each Member State may have other securities laws that require consideration, and it is not the intention of these selling restrictions to cover all of the laws that may be relevant. ICMA members should consider seeking local legal advice for transactions on a case-by-case basis. *November 2021*
- 1.6** Selling restrictions and legends addressing UK securities laws are set out in Appendix A13b. In relation to the EEA PRIIPs Regulation selling restrictions and legends, the assumption is that if there are potentially sales in the EEA it is likely that there will also potentially be sales in the UK and vice versa such that the prohibition of sales to EEA retail investors and the prohibition of sales to UK retail investors would both be included (unless turned off under Option 2 set out in Section 2.2 below). *June 2022*
- In relation to what may be deemed packaged in the EU, see the [Joint ESA Supervisory Statement - Application of Scope of the PRIIPs Regulation to Bonds](#) of October 2019. This may be different in the EU compared to the UK. In addition, what is deemed “made available” to a retail investor may be different in the EU compared to the UK. For more information see Appendix A13b.
- 1.7** Parties may also wish to consider the potential applicability and impact of the MiFID II product governance regime and the UK product governance regime. See Appendix A12a and Appendix A12b for suggested language. *November 2021*
- 1.8** The selling restrictions and legends include a reference to “as amended” in legislative definitions (e.g. “Directive 2014/65/EU (as amended, “**MiFID II**”)”). The reference to “as amended” may not be required if this concept is included in a general interpretation provision or definition elsewhere in the relevant document. *March 2020*

(d) at any time in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of Notes referred to in (b) to (d) above shall require the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Regulation, or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

For the purposes of this provision, the expression an “**offer of Notes to the public**” in relation to any Notes in any Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes to be offered so as to enable an investor to decide to purchase or subscribe for the Notes and the expression “**Prospectus Regulation**” means Regulation (EU) 2017/1129, as amended.

2.4 **Conditions for determining price to be included in the base prospectus (Prospectus Regulation Article 17)**

March 2020

The price and amount of Notes to be issued under the Programme will be determined by the Issuer and each relevant Dealer at the time of issue in accordance with prevailing market conditions.

2.5 **Legends related to notes which are to be traded only on an EEA regulated market, or a specific segment thereof, to which only qualified investors can have access**

June 2022

The following legends are relevant where the base prospectus is drawn up on the basis of the “wholesale” disclosure regime, i.e. utilising the exemption from the Prospectus Regulation summary requirement and addressing the disclosure requirements in the wholesale non-equity annexes in Delegated Regulation (EU) 2019/980, and envisages that notes with a minimum denomination of less than €100,000 (or equivalent) which are to be traded only on an EEA regulated market, or a specific segment thereof, to which only qualified investors can have access will be issued under the programme.¹¹

Note that although a base prospectus drawn up on the above basis will be Prospectus Regulation compliant, as a result of DISC 2.3.1(G) of the FCA Handbook if the notes potentially constitute “packaged” products and no key information document will be prepared, the cumulative nature of DISC 2.3.1(G) could mean that there is a risk that the FCA might deem a financial instrument with a minimum denomination of less than £100,000 to be “made available” to UK retail investors under the UK PRIIPs Regulation. This could be the case even if the offer document 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 (including having the notes admitted to trading on a regulated market or specific segment thereof to which only qualified investors can have access). DISC 2.3.1(G) was introduced into the FCA Handbook on 25 March 2022 but is subject to the DISC TP1 transitional provisions until 31 December 2022.

Optional legend

This legend may be included on the front cover/inside front cover of the prospectus/offering circular.

This [Offering Circular / Prospectus] has been prepared on the basis that any offer of Notes in any Member State of the European Economic Area other than offers (the “**Permitted Public Offers**”) which are made prior to [...] ¹⁵, and which are contemplated in the [Offering Circular / Prospectus] in [name(s) of Member State(s) where prospectus will be approved or passported for the purposes of a non-exempt offer] once the [Offering Circular / Prospectus] has been approved by the competent authority in [name of Member State where the prospectus will be approved] and published [and notified to the relevant competent authorit(y)(ies)] in accordance with the Prospectus Regulation, and in respect of which the Issuer has consented in writing to the use of the [Offering Circular / Prospectus] ¹⁰, will be made pursuant to an exemption under the Prospectus Regulation from the requirement to publish a prospectus for offers of Notes. Accordingly any person making or intending to make an offer in that Member State of Notes which are the subject of the [offering / placement] contemplated in this [Offering Circular / Prospectus], other than the Permitted Public Offers, may only do so in circumstances in which no obligation arises for the Issuer or any of the Managers to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation, in each case, in relation to such offer. Neither the Issuer nor the Managers have authorised, nor do they authorise, the making of any offer (other than Permitted Public Offers) of Notes in circumstances in which an obligation arises for the Issuer or the Managers to publish or supplement a prospectus for such offer. The expression “**Prospectus Regulation**” means Regulation (EU) 2017/1129, as amended.

3.4

Legend related to notes which are to be traded only on an EEA regulated market, or a specific segment thereof, to which only qualified investors can have access

June 2022

The following legend should only be used where the prospectus is drawn up on the basis of the “wholesale” disclosure regime, i.e. utilising the exemption from the Prospectus Regulation summary requirement and addressing the disclosure requirements in the wholesale non-equity annexes in Delegated Regulation (EU) 2019/980, and the notes to be issued have a denomination of less than €100,000 (or equivalent) and are to be traded only on an EEA regulated market, or a specific segment thereof, to which only qualified investors can have access.

Note that although a prospectus drawn up on the above basis will be Prospectus Regulation compliant, as a result of DISC 2.3.1(G) of the FCA Handbook if the notes potentially constitute “packaged” products and no key information document will be prepared, the cumulative nature of DISC 2.3.1(G) could mean that there is a risk that the FCA might deem a financial instrument with a minimum denomination of less than £100,000 to be “made available” to UK retail investors under the UK PRIIPs Regulation. This could be the case even if the offer document 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 (including having the notes admitted to trading on a regulated market or specific segment thereof to which only qualified investors can have access). DISC 2.3.1(G) was introduced into the FCA Handbook on 25 March 2022 but is subject to the DISC TP1 transitional provisions until 31 December 2022.

The Notes will only be admitted to trading on [insert name of relevant QI market/segment], which is [an EEA regulated market / a specific segment of an EEA regulated market] (as defined in MiFID II) to which only qualified investors (as defined in the Prospectus Regulation) can have access and shall not be offered or sold to non-qualified investors.