

Appendix A12b

Product governance (UK) language

Appendix A12b - Product governance (UK) language

Contents

November
2021

Part I	Introduction	A12b-3
Part II	Language for MTN programme documentation	A12b-4
Part III	Language for standalone issuance documentation	A12b-8
Part IV	Language for new issue announcements	A12b-10
Part V	Language for trading screens	A12b-10
Part VI	Notes	A12b-10

Part I – Introduction

- 1.1** The following language may be used by underwriters adopting the “ICMA1” or “ICMA2” approaches to product governance under the UK product governance regime. Further background information on these approaches to product governance is available on the ICMA MiFID II/R in primary markets webpage: <https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/Primary-Markets/primary-market-topics/mifid-ii-r-in-primary-markets/>. November
2021
- 1.2** Parties may also wish to consider the potential applicability and impact of the MiFID II product governance regime. Depending on the location of the manufacturers, there may be situations where: (i) the MiFID II product governance language set out in Appendix A12a; or (ii) the UK product governance language set out in this Appendix; or (iii) both, are needed. In addition, certain language in Appendix A12a addresses both the MiFID II product governance regime and the UK product governance regime in a combined format. Cross-references to that language are included in this Appendix where relevant. November
2021
- 1.3** The UK on-shored EU legislation at the end of the EU withdrawal transition period. There are various ways in which definitions of such “on-shored” legislation might be drafted. The policy approach adopted in this Appendix, for simplicity, is to reference each EU Regulation “as it forms part of domestic law by virtue of the *European Union (Withdrawal) Act 2018*”. This is because the *EUWA* (through section 3) brings into domestic law any direct EU legislation so far as operative immediately before “IP completion day” and fixes any deficiencies in that on-shored legislation through regulations made under section 8. This drafting approach also avoids referencing specific amending UK Statutory Instruments. Market participants using this ICMA language will want to consider how the definitions tie in more broadly with the usual approach taken in their documentation (for example, whether references to legislation are usually expressly stated to be “as amended”, whether a construction clause is usually adopted or whether a reference to a piece of legislation is in general regarded to be a reference to that piece of legislation as it stands at the date of the document). November
2021

Part II – Language for MTN programme documentation

This language should be included near the beginning of a base prospectus/offering circular (whether wholesale or retail).

November
2021

UK MiFIR product governance / target market – The Final Terms in respect of any Notes (or Pricing Supplement, in the case of Exempt Notes)¹ will² include a legend entitled “UK MiFIR Product Governance” which will outline the target market assessment in respect of the Notes and which channels for distribution of the Notes are appropriate. Any person subsequently offering, selling or recommending the Notes (a “**distributor**”) should take into consideration the target market assessment; however, a distributor subject to the FCA Handbook Product Intervention and Product Governance Sourcebook (the “**UK MiFIR Product Governance Rules**”) is responsible for undertaking its own target market assessment in respect of the Notes (by either adopting or refining the target market assessment) and determining appropriate distribution channels.

November
2021

A determination will be made in relation to each issue about whether, for the purpose of the UK MiFIR Product Governance Rules, any Dealer subscribing for any Notes is a manufacturer in respect of such Notes, but otherwise neither the Arranger nor the Dealers nor any of their respective affiliates will be a manufacturer for the purpose of the UK MiFIR Product Governance Rules.

November
2021

*The following legend should be included at the top of the form of final terms for **wholesale/high denomination EEA/UK Prospectus Regulation compliant base prospectuses/offering circulars**³*

November
2021

*This legend is the “**ICMA1**” (professional investors and eligible counterparties (ECPs) only) legend.*

November
2021

⁴**[UK MiFIR product governance / Professional investors and ECPs only target market** – Solely for the purposes of [the/ each] manufacturer’s product approval process, the target market assessment in respect of the Notes has led to the conclusion that: (i) the target market for the Notes is only eligible counterparties as defined in the FCA Handbook Conduct of Business Sourcebook (“**COBS**”), and professional clients, as defined in Regulation (EU) No 600/2014 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018 (“**UK MiFIR**”); and (ii) all channels for distribution of the Notes to eligible counterparties and professional clients are appropriate. *[Consider any negative target market.]*⁵ Any person subsequently offering, selling or recommending the Notes (a “**distributor**”) should take into consideration the manufacturer[’s/s’] target market assessment; however, a distributor subject to the FCA Handbook Product Intervention and Product Governance Sourcebook (the “**UK MiFIR Product Governance Rules**”) is responsible for undertaking its own target market assessment in respect of the Notes (by either adopting or refining the manufacturer[’s/s’] target market assessment) and determining appropriate distribution channels.]

November
2021

The following legends should be included at the top of each of the forms of final terms for **retail / low denomination EEA/ UK Prospectus Regulation compliant base prospectuses/offering circulars**

November
2021

These legends are the “ICMA1” (professional investors and eligible counterparties (ECPs) only) legend and “ICMA2” (retail) legend.

November
2021

[⁶UK MIFIR product governance / Professional investors and ECPs only target market – Solely for the purposes of [the/ each] manufacturer’s product approval process, the target market assessment in respect of the Notes has led to the conclusion that: (i) the target market for the Notes is only eligible counterparties as defined in the FCA Handbook Conduct of Business Sourcebook (“**COBS**”), and professional clients, as defined in Regulation (EU) No 600/2014 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018 (“**UK MiFIR**”); and (ii) all channels for distribution of the Notes to eligible counterparties and professional clients are appropriate. *[Consider any negative target market.]*⁶ Any person subsequently offering, selling or recommending the Notes (a “distributor”) should take into consideration the manufacturer[’s/s’] target market assessment; however, a distributor subject to the FCA Handbook Product Intervention and Product Governance Sourcebook (the “**UK MiFIR Product Governance Rules**”) is responsible for undertaking its own target market assessment in respect of the Notes (by either adopting or refining the manufacturer[’s/s’] target market assessment) and determining appropriate distribution channels.]

November
2021

OR

⁷[UK MIFIR product governance / Retail investors, professional investors and ECPs target market – Solely for the purposes of [the/each] manufacturer’s product approval process, the target market assessment in respect of the Notes has led to the conclusion that: (i) the target market for the Notes is retail clients, as defined in point (8) of Article 2 of Regulation (EU) No 2017/565 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018 (“**EUWA**”), and eligible counterparties, as defined in the FCA Handbook Conduct of Business Sourcebook (“**COBS**”) and professional clients, as defined in Regulation (EU) No 600/2014 as it forms part of domestic law by virtue of the EUWA (“**UK MiFIR**”); **EITHER** ⁸[and (ii) all channels for distribution of the Notes are appropriate[, including investment advice, portfolio management, non-advised sales and pure execution services]⁹ **OR** ¹⁰[(ii) all channels for distribution to eligible counterparties and professional clients are appropriate; and (iii) the following channels for distribution of the Notes to retail clients are appropriate - investment advice[, / and] portfolio management[, / and] non-advised sales [and pure execution services][, subject to the distributor’s suitability and appropriateness obligations under COBS, as applicable]. [*Consider any negative target market.*]⁵ Any person subsequently offering, selling or recommending the Notes (a “**distributor**”) should take into consideration the manufacturer[’s/s’] target market assessment; however, a distributor subject to the FCA Handbook Product Intervention and Product Governance Sourcebook (the “UK MiFIR Product Governance Rules”) is responsible for undertaking its own target market assessment in respect of the Notes (by either adopting or refining the manufacturer[’s/s’] target market assessment) and determining appropriate distribution channels[, subject to the distributor’s suitability and appropriateness obligations under COBS, as applicable]¹¹.]

November
2021

The following legend should be included at the top of any form of pricing supplement in base prospectuses/offering circulars³

November
2021

⁴[UK MIFIR product governance / target market - [appropriate target market legend to be included]]

November
2021

Language for programme / dealer agreements

See language set out in Part II of Appendix A12a addressing both the EEA MiFID II product governance regime and the UK product governance regime in a combined format.

November
2021

Language for the form of subscription agreement¹²

The following wording is a form of language to be considered for inclusion in the form of subscription agreement to address the obligation in the UK MiFIR Product Governance Rules. 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.

*November
2021*

Solely for the purposes of the requirements of 3.2.7R of the FCA Handbook Product Intervention and Product Governance Sourcebook (the “**UK MiFIR Product Governance Rules**”) regarding the mutual responsibilities of manufacturers under the UK MiFIR Product Governance Rules[.]

*November
2021*

(a) [each of] [the Issuer [, the Guarantor[s]]¹³ and]¹⁴ the [[Joint] Lead Manager[s]/[identify Manager(s) who is/are deemed to be UK MiFIR manufacturer(s)]¹⁵ ([each a] [the] “**UK Manufacturer**” [and together “**the UK Manufacturers**”) [acknowledges to each other UK Manufacturer that it] understands the responsibilities conferred upon it under the UK MiFIR 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 [Final Terms/Pricing Supplement/ announcements] in connection with the Notes[; and

*November
2021*

(b) the [Managers] [and the/, the][Issuer[and the Guarantor[s]]¹⁶ note the application of the UK MiFIR Product Governance Rules and acknowledge the target market and distribution channels identified as applying to the Notes by the UK Manufacturer[s] and the related information set out in the [Final Terms/Pricing Supplement/ announcements] in connection with the Notes.]

*November
2021*

Part III – Language for standalone issuance documentation

*The following language should be included near the beginning of a **wholesale/high denomination** prospectus/offering circular.*

November
2021

This is the “ICMA1” (professional investors and eligible counterparties (ECPs) only) legend.

November
2021

UK MIFIR product governance / Professional investors and ECPs only target market

November
2021

– Solely for the purposes of [the/ each] manufacturer’s product approval process, the target market assessment in respect of the Notes has led to the conclusion that: (i) the target market for the Notes is only eligible counterparties, as defined in the FCA Handbook Conduct of Business Sourcebook (“**COBS**”), and professional clients, as defined in Regulation (EU) No 600/2014 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018 (“**UK MiFIR**”); and (ii) all channels for distribution of the Notes to eligible counterparties and professional clients are appropriate. [*Consider any negative market.*]⁵ Any person subsequently offering, selling or recommending the Notes (a “**distributor**”) should take into consideration the manufacturer[’s/s’] target market assessment; however, a distributor subject to the FCA Handbook Product Intervention and Product Governance Sourcebook (the “**UK MiFIR Product Governance Rules**”) is responsible for undertaking its own target market assessment in respect of the Notes (by either adopting or refining the manufacturer[’s/s’] target market assessment) and determining appropriate distribution channels.

*The following language should be included near the beginning of a **retail/low denomination** prospectus/offering circular.*

November
2021

This is the “ICMA2” (retail) legend.

November
2021

UK MiFIR product governance / Retail investors, professional investors and ECPs target market – Solely for the purposes of [the/ each] manufacturer’s product approval process, the target market assessment in respect of the Notes has led to the conclusion that: (i) the target market for the Notes is retail clients, as defined in point (8) of Article 2 of Regulation (EU) No 2017/565 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018 (“**EUWA**”), and eligible counterparties, as defined in the FCA Handbook Conduct of Business Sourcebook (“**COBS**”) and professional clients, as defined in Regulation (EU) No 600/2014 as it forms part of domestic law by virtue of the EUWA (“**UK MiFIR**”); **EITHER**⁸[and (ii) all channels for distribution of the Notes are appropriate[, including investment advice, portfolio management, non-advised sales and pure execution services]⁹ **OR**¹⁷[(ii) all channels for distribution to eligible counterparties and professional clients are appropriate; and (iii) the following channels for distribution of the Notes to retail clients are appropriate - investment advice[, and] portfolio management[, and] non-advised sales [and pure execution services]], subject to the distributor’s suitability and appropriateness obligations under COBS, as applicable]. [*Consider any negative market.*]⁵ Any person subsequently offering, selling or recommending the Notes (a “**distributor**”) should take into consideration the manufacturer[’s/s’] target market assessment; however, a distributor subject to the FCA Handbook Product Intervention and Product Governance Sourcebook (the “**UK MiFIR Product Governance Rules**”) is responsible for undertaking its own target market assessment in respect of the Notes (by either adopting or refining the manufacturer[’s/s’] target market assessment) and determining appropriate distribution channels[, subject to the distributor’s suitability and appropriateness obligations under COBS, as applicable]¹⁷.

November
2021

The following language is a form of language to be considered for inclusion in subscription agreements to address the obligation in 3.2.7R of the FCA Handbook Product Intervention and Product Governance Sourcebook. 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

November
2021

Solely for the purposes of the requirements of 3.2.7R of the FCA Handbook Product Intervention and Product Governance Sourcebook (the “**UK MiFIR Product Governance Rules**”) regarding the mutual responsibilities of manufacturers under the UK MiFIR Product Governance Rules[:]

November
2021

(a) [each of] [the Issuer [, the Guarantor[s]]¹⁸ and]¹⁴ the [[Joint] Lead Manager[s]/[identify Manager(s) who are deemed to be UK MiFIR manufacturer(s)]¹⁹ ([each] [the] a **“UK Manufacturer”** [and together the **“UK Manufacturers”**]) [acknowledges to each other UK Manufacturer that it] understands the responsibilities conferred upon it under the UK MiFIR 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

November
2021

(b) the [Managers] [and the/, the][Issuer[and the Guarantor[s]]²⁰ note the application of the UK MiFIR Product Governance Rules and acknowledge the target market and distribution channels identified as applying to the Notes by the UK Manufacturers and the related information set out in the [Prospectus/announcements] in connection with the Notes.]

November
2021

Part IV – Language for new issue announcements

See language set out in Part IV of Appendix A12a addressing both the EEA MiFID II product governance regime and the UK product governance regime in a combined format.

November
2021

Part V – Language for trading screens

See language set out in Part V of Appendix A12a addressing both the EEA MiFID II product governance regime and the UK product governance regime in a combined format.

November
2021

Part VI – Notes

1. If the programme includes a specific reference to Drawdown Prospectus, this should be reflected here.
2. Consider including “may” for a programme with a non-UK MiFIR issuer and non- UK MiFIR guarantor(s) to cater for circumstances where the managers in relation to the Notes are also not subject to UK MiFIR and therefore there are no UK MiFIR manufacturers.
3. This wording applies whether or not the programme follows PRIIPS option 1 (prohibition on sales to retail in the EEA/UK always applies) or PRIIPs option 2 (there is flexibility to turn the prohibition on sales to retail in the EEA/UK off if the Notes are not packaged or a KID is produced). See further Appendix A13 and Appendix A13b.

November
2021

November
2021

November
2021

4. *The brackets around this legend should only be retained in the form of final terms or pricing supplement, as applicable, if “may” has been included in the language to be set out near the beginning of the base prospectus/offering circular. As indicated in note 2 above, the legend may not be necessary for a programme with a non-UK MiFIR issuer and non-UK MiFIR guarantor(s) if the managers in relation to the Notes are also not subject to UK MiFIR and therefore there are no UK MiFIR manufacturers. Depending on the location of the manufacturers, there may be situations where either the MiFID II product governance legend (set out in Appendix A12a) or the UK MiFIR product governance legend or both are included* November 2021
5. *The “ICMA1” and “ICMA2” approaches envisage that a negative target market will be unlikely. At the time of the programme establishment/update consider what types of bonds may be issued and whether the flexibility to include a negative target market may be needed for relevant issuance. Note that a programme which only envisages vanilla issuance is unlikely to require a negative target market placeholder. If a negative target market is deemed necessary, wording along the following lines could be included: “The target market assessment indicates that Notes are incompatible with the needs, characteristic and objectives of clients which are [fully risk averse/have no risk tolerance or are seeking on-demand full repayment of the amounts invested].”* November 2021
6. *This legend is applicable if following the “ICMA1” (professional investors and eligible counterparties (ECPs) only) target market approach.* November 2021
7. *This legend is applicable if following the “ICMA2” retail approach which would only be the case in relation to a low denomination issue and for bonds which are not ESMA complex (in the UK context, as reflected in COBS) or certain ESMA complex bonds (in the UK context, as reflected in COBS) only (as explained in the “ICMA2” paper available on the ICMA MiFID II/R in primary markets webpage: <https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/Primary-Markets/primary-market-topics/mifid-ii-r-in-primary-markets/>).* November 2021
8. *Include for bonds that are not ESMA complex (in the UK context, as reflected in COBS).* November 2021
9. *This list may not be necessary, especially for bonds that are not ESMA complex (in the UK context, as reflected in COBS) where all channels of distribution may be appropriate. It reflects the list used in the examples in the ESMA Guidelines.* November 2021

- | | | |
|-----|---|------------------|
| 10. | <i>Include for certain ESMA complex bonds (in the UK context, as reflected in COBS). This list may need to be amended, for example, if advised sales are deemed necessary. If there are advised sales, a determination of suitability will be necessary. In addition, if the Notes constitute “complex” products, pure execution services are not permitted to retail without the need to make the determination of appropriateness (see COBS 10A.4).</i> | November
2021 |
| 11. | <i>If the Notes constitute “complex” products, pure execution services are not permitted to retail without the need to make the determination of appropriateness (see COBS 10A.4). If there are advised sales, a determination of suitability will be necessary.</i> | November
2021 |
| 12. | <i>This form of language may also be included in a dealer confirmation and dealer accession letter (for a note issue) where no subscription agreement is being entered into.</i> | November
2021 |
| 13. | <i>Include a reference to any guarantor that is a UK MiFIR regulated entity and that may collaborate on the creation, development, issue and/or design of an issue of Notes under the programme.</i> | November
2021 |
| 14. | <i>Include a reference to the issuer where the issuer is a UK MiFIR regulated entity.</i> | November
2021 |
| 15. | <i>This should be completed on a note issue with the names of all entities deemed to be UK MiFIR 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 Notes, 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
2021 |
| 16. | <i>Include a reference to the issuer and/or any guarantor(s) here where such references may not be included in the first sentence on a note issue (e.g. because the issuer and/or any guarantor(s) are not UK MiFIR regulated entities and may not recognise themselves as manufacturers and therefore falling within the scope of the first sentence).</i> | November
2021 |
| 17. | <i>Include for certain ESMA complex bonds (in the UK context, as reflected in COBS).</i> | November
2021 |
| 18. | <i>Include a reference to any guarantor that is a UK MiFIR regulated entity and that has collaborated on the creation, development, issue and/or design of the bonds.</i> | November
2021 |

19. *This should include all entities deemed to be UK MiFIR 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.* November 2021
20. *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 UK MiFIR regulated entities and do not recognise themselves as manufacturers and therefore falling within the scope of the first sentence).* November 2021

