

Appendix A13

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

Appendix A13 - Selling restrictions and legends (EEA PRIIPs Regulation, EEA Prospectus Regulation, UK)

These ICMA suggested debt selling restrictions and legends are appropriate for use during the transition period in effect pursuant to the EU - UK Withdrawal Agreement. They may require amendment after the end of such transition period. For further information, ICMA members and Handbook subscribers can contact ICMA staff (LegalHelpdesk@icmagroup.org).

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Part I – Introduction

1.1 These ICMA suggested debt selling restrictions and legends are for use in connection with offerings in EEA Member States and the UK. On 21 July 2019, the Prospectus Directive was repealed fully and replaced by Regulation (EU) 2017/1129 of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (the “**Prospectus Regulation**”). As a Regulation it is binding in its entirety and directly applicable in all EEA Member States and, during the transition period in effect pursuant to the EU – UK Withdrawal Agreement, the UK. Given this, no implementing measures are required at a national level. Therefore there should be no need for additional or alternative Prospectus Regulation selling restrictions in relation to public offers in EEA jurisdictions or the UK, although there may be a need for additional selling restrictions or legends to address other local requirements in EEA jurisdictions (see 1.5 below). In the case of further enlargement of the European Union and the EEA, the Prospectus Regulation related selling restrictions should only be used where local counsel has confirmed its application in the relevant Member State following its accession.

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1.2 This note identifies:

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- (a) standard forms of selling restriction and legend that deal with Regulation (EU) No 1286/2014 (as amended, the “**PRIIPs Regulation**”);
 - (b) standard forms of Prospectus Regulation public offer selling restriction that are appropriate for Member States of the EEA and, during the transition period in effect pursuant to the EU - UK Withdrawal Agreement, the UK; and
 - (c) standard UK selling restriction language that deals with non-Prospectus Regulation related securities laws,
- to be used in relation to MTN programmes and standalone debt issues.

1.3 In addition to the selling restrictions and the legend that deals with the PRIIPs Regulation, the following are set out:

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- (a) an optional legend for inclusion in certain standalone prospectuses;

- (b) suggested disclosure relating to the conditions for determining the price and amount of notes to be issued under an MTN programme; and
- (c) suggested legends for inclusion in standalone prospectuses and base prospectuses/final terms where low denomination notes are to be admitted to an EEA or UK qualified investor regulated market or segment only.

- 1.4** The purpose of these ICMA forms of language is to assist market efficiency by providing a generally accepted standard format. The forms of language have been prepared with the help of several City of London capital markets law firms and have been circulated to a number of other law firms prior to publication. The ICMA is extremely grateful for the advice and assistance it has received. *March 2020*
- 1.5** The Prospectus Regulation public offer selling restriction reflects the requirements of the Prospectus Regulation. The City of London 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 the UK and 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. *March 2020*
- 1.6** Parties may also wish to consider the impact of the MiFID II product governance regime. See Appendix A12a for suggested language. *March 2020*
- 1.7** The standard forms of “PD qualified investor selling restriction for certain UKLA approved prospectuses” have been deleted from this Appendix. Those forms of selling restriction were intended for use where the FCA was approving a base prospectus/prospectus in relation to notes to be issued with denominations of less than €100,000 (or equivalent) which had not been prepared in accordance with the gold-plated retail disclosure requirements set out in the UK FCA’s Technical Note 632.1 because the notes were to be offered to qualified investors (as defined in the Prospectus Directive) only. That Technical Note has been withdrawn. This reflects the fact that Articles 6 and 7 of the Prospectus Regulation provide that the summary requirement exemption and the wholesale disclosure requirements apply to both (i) non-equity securities which have a denomination of at least €100,000 and (ii) non-equity securities “which are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access”. Admission to such a market, or such a segment of a market, is a concept which overlaps with qualified investor only offers. See paragraphs 2.4 and 3.4 of Appendix A13 in the March 2019 version of the ICMA Primary Market Handbook for the forms of PD qualified investor selling restriction. See 2.5 and 3.4 below for suggested language to be included in a wholesale base prospectus / final terms / prospectus where low denomination notes are to be admitted to a Member State qualified investor regulated market or segment only. *March 2020*

- 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.

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Part II – MTN programmes

2.1 PRIIPs Regulation selling restriction and legend – Option 1

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Selling restriction

The following selling restriction and legend should be used where the issuer wishes to impose a blanket prohibition on marketing and sales to EEA and UK retail investors in respect of all issuances under the programme.

If this selling restriction is included, do not include the Prospectus Regulation public offer selling restriction set out in 2.3 below.

Prohibition of Sales to EEA and UK Retail Investors

Each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that it has not offered, sold or otherwise made available and will not offer, sell or otherwise make available any Notes which are the subject of the offering contemplated by [the / this] [Offering Circular / Prospectus] as completed by the Final Terms [(or Pricing Supplement, as the case may be)]¹ in relation thereto to any retail investor in the European Economic Area or in the United Kingdom. For the purposes of this provision:

- (a) the expression “**retail investor**” means a person who is one (or more) of the following:
- (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended, “**MiFID II**”); or
 - (ii) a customer within the meaning of Directive (EU) 2016/97 (as amended, the “**Insurance Distribution Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II²; or
 - (iii) not a qualified investor as defined in Regulation (EU) 2017/1129 (as amended, the “**Prospectus Regulation**”)³; and
- (b) the expression “**offer**” includes 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 Notes⁴.

Legend

Legend for inclusion on:

- front cover/inside front cover of base prospectus/offering circular;
- front of pro forma final terms/pricing supplement; and
- front of Final Terms/Pricing Supplement

PROHIBITION OF SALES TO EEA AND UK RETAIL INVESTORS

– The Notes are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the European Economic Area (“**EEA**”) or in the United Kingdom (“**UK**”). For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended, “**MiFID II**”); (ii) a customer within the meaning of Directive (EU) 2016/97 (as amended, the “**Insurance Distribution Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II⁵; or (iii) not a qualified investor as defined in Regulation (EU) 2017/1129 (as amended, the “**Prospectus Regulation**”)⁵. Consequently no key information document required by Regulation (EU) No 1286/2014 (as amended, the “**PRIPs Regulation**”) for offering or selling the Notes or otherwise making them available to retail investors in the EEA or in the UK has been prepared and therefore offering or selling the Notes or otherwise making them available to any retail investor in the EEA or in the UK may be unlawful under the PRIPs Regulation.

2.2

PRIPs Regulation selling restriction and legend – Option 2

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Selling restriction

The following selling restriction and legend should be used where the issuer wishes to impose a prohibition on marketing and sales to EEA and UK retail investors, with the option to switch off this prohibition in the final terms for (1) “non-packaged” issues under the programme that will be sold to EEA and UK retail investors and/or (2) “packaged” issues under the programme that will be sold to EEA and UK retail investors with a PRIPs Regulation KID.

If this option is used, also include the Prospectus Regulation public offer selling restriction set out in 2.3 below unless the programme contains a blanket prohibition on the issue of notes with a denomination of less than €100,000, as explained further below.

In addition, amendments will need to be made to the form of final terms and pricing supplement. See further “Prohibition of Sales to EEA and UK Retail Investors” in:

- Appendix A8, Part III (pro forma retail final terms), item 8 of Part B;
- Appendix A8, Part VI (pro forma wholesale final terms), item 6 of Part B; and
- Appendix A8, Part IX (pro forma pricing supplement), item 5 of Part B.

Prohibition of Sales to EEA and UK Retail Investors

Unless the Final Terms [(or Pricing Supplement, as the case may be)]¹ in respect of any Notes specifies the “Prohibition of Sales to EEA and UK Retail Investors” as “Not Applicable”, each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that it has not offered, sold or otherwise made available and will not offer, sell or otherwise make available any Notes which are the subject of the offering contemplated by [the / this] [Offering Circular / Prospectus] as completed by the Final Terms [(or Pricing Supplement, as the case may be)]¹ in relation thereto to any retail investor in the European Economic Area or in the United Kingdom. For the purposes of this provision:

- (a) the expression “**retail investor**” means a person who is one (or more) of the following:
 - (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended, “**MiFID II**”); or
 - (ii) a customer within the meaning of Directive (EU) 2016/97 (as amended, the “**Insurance Distribution Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II²; or
 - (iii) not a qualified investor as defined in Regulation (EU) 2017/1129 (as amended, the “**Prospectus Regulation**”)³; and
- (b) the expression an “**offer**” includes 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.⁴

Legend

Legend for inclusion on:

- the front cover/inside front cover of base prospectus/offering circular;
- the front of pro forma final terms/pricing supplement;
- the front of Final Terms/Pricing Supplement for offers of notes that potentially constitute “packaged” products and where no KID will be prepared, or where the issuer wishes to prohibit offers to EEA and UK retail investors for any other reason.

[[IMPORTANT – EEA AND UK RETAIL INVESTORS]⁶ / [PROHIBITION OF SALES TO EEA AND UK RETAIL INVESTORS]⁷ - [If the Final Terms [(or Pricing Supplement, as the case may be)]¹ in respect of any Notes includes a legend entitled “Prohibition of Sales to EEA and UK Retail Investors”, the]⁶/[The]⁷ Notes are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the European Economic Area (“**EEA**”) or in the United Kingdom (“**UK**”). For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended, “**MiFID II**”); (ii) a customer within the meaning of Directive (EU) 2016/97 (as amended, the “**Insurance Distribution Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II²; or (iii) not a qualified investor as defined in Regulation (EU) 2017/1129 (as amended, the “**Prospectus Regulation**”)⁵. Consequently no key information document required by Regulation (EU) No 1286/2014 (as amended, the “**PRIIPs Regulation**”) for offering or selling the Notes or otherwise making them available to retail investors in the EEA or in the UK has been prepared and therefore offering or selling the Notes or otherwise making them available to any retail investor in the EEA or in the UK may be unlawful under the PRIIPs Regulation.⁸

2.3 Prospectus Regulation public offer selling restriction

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This selling restriction should be used unless:

- *the PRIIPs Regulation selling restriction and legend – Option 1 (set out at 2.1 above) is included in the programme (in which case, a separate Prospectus Regulation selling restriction is not required); and/or*
- *the programme contains a blanket prohibition on the issue of notes, whether admitted to trading on an EEA or UK regulated market or not, with a denomination of less than €100,000 or equivalent (in which case, a Prospectus Regulation selling restriction is not required).*

In the case of programmes where the base prospectus has been approved solely:

- for the admission to trading of notes with a denomination of at least €100,000 or equivalent; and/or*
- for the admission to trading of notes with a denomination of less than €100,000 or equivalent on an EEA or UK regulated market, or specific segment of such a regulated market, to which only qualified investors can have access,*

sub-paragraph (a) of the selling restriction should be deleted as it is not appropriate for such a base prospectus, which will have been drawn up on the basis of the “wholesale” disclosure regime.

Users may want to add the following optional wording between the current sub-paragraphs (c) and (d) of the selling restriction, if they think this would provide more clarity and guidance to readers in relation to (i) above: “(d) at any time if the denomination per [Note / unit of Notes] being offered amounts to at least €100,000 (or equivalent);”.

See 2.5 below for further explanation and suggested language to be included in such a base prospectus/final terms in relation to (ii) above.

If the Final Terms [(or Pricing Supplement, as the case may be)]¹ in respect of any Notes specifies the “Prohibition of Sales to EEA and UK Retail Investors” as “Not Applicable”, in relation to each Member State of the European Economic Area and the United Kingdom (each, a “**Relevant State**”), each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that it has not made and will not make an offer of Notes which are the subject of the offering contemplated by [the / this] [Offering Circular / Prospectus] as completed by the final terms in relation thereto to the public in that Relevant State except that it may make an offer of such Notes to the public in that Relevant State:

- (a) if the final terms in relation to the Notes specify that an offer of those Notes may be made other than pursuant to Article 1(4) of the Prospectus Regulation in that Relevant State (a “**Non-exempt Offer**”), following the date of publication of a prospectus in relation to such Notes which has been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, provided that any such prospectus has subsequently been completed by the final terms contemplating such Non-exempt Offer, in accordance with the Prospectus Regulation, in the period beginning and ending on the dates specified in such prospectus or final terms, as applicable⁹ and the Issuer has consented in writing to its use for the purpose of that Non-exempt Offer¹⁰;
- (b) at any time to any legal entity which is a qualified investor as defined in the Prospectus Regulation;
- (c) at any time to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Regulation), subject to obtaining the prior consent of the relevant Dealer or Dealers nominated by the Issuer for any such offer; or
- (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 Relevant 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)

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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.

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

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 or UK regulated market, or a specific segment thereof, to which only qualified investors can have access will be issued under the programme.¹¹

Legend for inclusion on inside front cover of base prospectus/ offering circular

This [Offering Circular/Prospectus] has been prepared on the basis that any Notes with a minimum denomination of less than €100,000 (or equivalent in another currency) will (i) only be admitted to trading on an EEA or UK regulated market (as defined in MiFID II), or a specific segment of an EEA or UK regulated market, to which only qualified investors (as defined in the Prospectus Regulation) can have access (in which case they shall not be offered or sold to non-qualified investors) or (ii) only be offered to the public in an EEA Member State or the UK pursuant to an exemption under Article 1(4) of the Prospectus Regulation.

Legend for inclusion on front of Final Terms for Notes with a minimum denomination of less than €100,000 (or equivalent in another currency) which will only be admitted to trading on an EEA or UK regulated market, or a specific segment of such a regulated market, to which only qualified investors can have access

The Notes will only be admitted to trading on [insert name of relevant QI market / segment], which is [[an EEA / a UK] regulated market / a specific segment of [an EEA / a UK] 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.

Each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that:

- (a) in relation to any Notes which have a maturity of less than one year, (i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (ii) it has not offered or sold and will not offer or sell any Notes other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the Notes would otherwise constitute a contravention of Section 19 of the FSMA by the Issuer;¹²
- (b) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of any Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer [or the Guarantor];¹³ and
- (c) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to any Notes in, from or otherwise involving the United Kingdom.

Part III – Standalone debt issues

3.1 PRIIPs Regulation selling restriction and legend.

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The following selling restriction and legend are relevant for offers of Notes that potentially constitute “packaged” products and where no KID will be prepared under the PRIIPs Regulation; or where the issuer wishes to prohibit offers to EEA and UK retail investors for any other reason. Otherwise, one of the Prospectus Regulation exempt public offer or Prospectus Regulation non-exempt public offer selling restrictions set out in 3.2 or 3.3 should be used, if needed.

Selling restriction

Prohibition of Sales to EEA and UK Retail Investors

Each Manager has represented and agreed that it has not offered, sold or otherwise made available and will not offer, sell or otherwise make available any Notes to any retail investor in the European Economic Area or in the United Kingdom. For the purposes of this provision:

- (a) the expression “**retail investor**” means a person who is one (or more) of the following:
 - (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended, “**MiFID II**”); or
 - (ii) a customer within the meaning of Directive (EU) 2016/97 (as amended, the “**Insurance Distribution Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II²; or
 - (iii) not a qualified investor as defined in Regulation (EU) 2017/1129 (as amended, the “**Prospectus Regulation**”)³; and
- (b) the expression “offer” includes 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 Notes¹⁴.

Legend

Legend for inclusion on front cover/inside front cover of prospectus/ offering circular.

PROHIBITION OF SALES TO EEA AND UK RETAIL INVESTORS

– The Notes are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the European Economic Area (“**EEA**”) or in the United Kingdom (“**UK**”). For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended, “**MiFID II**”); or (ii) a customer within the meaning of Directive (EU) 2016/97 (as amended, the “**Insurance Distribution Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II²; or (iii) not a qualified investor as defined in Regulation (EU) 2017/1129 (as amended, the “**Prospectus Regulation**”)¹⁵. Consequently no key information document required by Regulation (EU) No 1286/2014 (as amended, the “**PRIIPs Regulation**”) for offering or selling the Notes or otherwise making them available to retail investors in the EEA or in the UK has been prepared and therefore offering or selling the Notes or otherwise making them available to any retail investor in the EEA or in the UK may be unlawful under the PRIIPs Regulation.

3.2 Prospectus Regulation exempt public offer selling restriction and optional legend

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This selling restriction should be used and the optional legend is appropriate where:

- the PRIIPs Regulation selling restriction and legend (set out at 3.1 above) is **not** being used; and
- the notes to be issued have a denomination of less than €100,000 or equivalent.

This selling restriction and optional legend may be excluded where the minimum denomination of the notes is equal to, or greater than €100,000 or equivalent.

Selling restriction

In relation to each Member State of the European Economic Area and the United Kingdom (each, a “**Relevant State**”), each Manager has represented and agreed that it has not made and will not make an offer of Notes which are the subject of the offering contemplated by [the / this] [Offering Circular / Prospectus] to the public in that Relevant State other than:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Regulation;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Regulation), subject to obtaining the prior consent of the relevant Dealer or Dealers nominated by the Issuer for any such offer; or

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

provided that no such offer of Notes shall require the Issuer or any Manager to publish a prospectus pursuant to Article 3 of the Prospectus Regulation [or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation]¹⁶.

For the purposes of this provision, the expression an “**offer of Notes to the public**” in relation to any Notes in any Relevant 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.

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 or the United Kingdom (each, a “**Relevant State**”) 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 Relevant State of Notes which are the subject of the [offering / placement] contemplated in this [Offering Circular / Prospectus] 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]¹⁶, 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 of Notes in circumstances in which an obligation arises for the Issuer or the Managers to publish [or supplement]¹⁶ a prospectus for such offer. The expression “**Prospectus Regulation**” means Regulation (EU) 2017/1129, as amended.

This selling restriction should be used and the optional legend is appropriate where:

- *the PRIIPs Regulation selling restriction and legend (set out at 3.1 above) is **not** being used (because the notes are “non-packaged” or “packaged” with a PRIIPs Regulation KID available in the relevant language(s));*
- *the notes to be issued have a denomination of less than €100,000 or equivalent; and*
- *the prospectus has been approved and, if relevant, passported for the purposes of Prospectus Regulation non-exempt public offers in one or more EEA Member States and/or the UK.*

Selling restriction

In relation to each Member State of the European Economic Area and the United Kingdom (each, a “**Relevant State**”), each Manager has represented and agreed that it has not made and will not make an offer of Notes which are the subject of the offering contemplated by [the / this] [Offering Circular / Prospectus] to the public in that Relevant State other than the offers contemplated in the Prospectus in [name(s) of Relevant State(s) where prospectus will be approved or passported for the purposes of a non-exempt offer] from the time the Prospectus has been approved by the competent authority in [name of Relevant State where prospectus will be approved] and published [and notified to the relevant competent authorit(y)(ies)] in accordance with the Prospectus Regulation until [...]¹⁷, and provided that the Issuer has consented in writing to use of the Prospectus for any such offers, except that it may make an offer of such Notes to the public in that Relevant State:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Regulation;
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Regulation), subject to obtaining the prior consent of the relevant Manager or Managers nominated by the Issuer for any such offer; or
- (c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of Notes shall require the Issuer or any Manager 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 Relevant 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.

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 or in the United Kingdom (each, a “**Relevant State**”) other than offers (the “**Permitted Public Offers**”) which are made prior to [...]”¹⁷, and which are contemplated in the [Offering Circular / Prospectus] in [name(s) of Relevant 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 Relevant State where the prospectus will be approved]) and published [and notified to the relevant competent authority(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 Relevant 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.

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

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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 or UK regulated market, or a specific segment thereof, to which only qualified investors can have access.

The Notes will only be admitted to trading on [insert name of relevant QI market/segment], which is [[an EEA / a UK] regulated market / a specific segment of [an EEA / a UK] 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.

Selling restrictions addressing additional UK securities laws

March 2020

Each Manager has represented and agreed that:

- (a) (i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (ii) it has not offered or sold and will not offer or sell the Notes other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the Notes would otherwise constitute a contravention of Section 19 of the FSMA by the Issuer;¹²
- (b) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer [or the Guarantor];¹³ and
- (c) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Notes in, from or otherwise involving the United Kingdom.

Part IV – Notes

1. *Include this language where the base prospectus/offering circular includes a pro forma pricing supplement.* *March 2020*
2. *This language tracks the wording used in the PRIIPs Regulation, updated to reflect the implementation of the Insurance Distribution Directive that superseded the Insurance Mediation Directive. This limb of the definition is included to ensure it is clear that all limbs of the definition of “retail investor” in the PRIIPs Regulation have been addressed.* *March 2020*
3. *The three limbs and paragraph (b) have been included to ensure it is clear how both the Prospectus Regulation public offer regime (for securities with a denomination of less than EUR 100,000 or equivalent) and the PRIIPs Regulation are being addressed.* *March 2020*
4. *Because a Prospectus Regulation selling restriction is not required where the programme contains a blanket prohibition on the issue of notes with a denomination of less than EUR 100,000 or equivalent, paragraphs (a)(iii) and (b) (which relate to the Prospectus Regulation public offer regime) do not need to be included where the programme contains such blanket prohibition.* *March 2020*
5. *Because a Prospectus Regulation selling restriction is not required where the programme contains a blanket prohibition on the issue of notes with a denomination of less than EUR 100,000 or equivalent, the third limb of the definition of retail investor (which relates to the Prospectus Regulation public offer regime) does not need to be included where the programme contains such blanket prohibition.* *March 2020*
6. *To be included with the legend on the front cover/inside front cover of base prospectus/offering circular.* *March 2020*
7. *To be included with the legend on the front of the final terms/pricing supplement for offers of notes that potentially constitute “packaged” products and where no KID will be prepared, or where the issuer wishes to prohibit offers to EEA and UK retail investors for any other reason.* *March 2020*
8. *Square brackets around this legend are only required in pro forma final terms/pricing supplement in base prospectuses/offering circulars.* *March 2020*
9. *The prospectus or final terms therefore needs to include start and end dates.* *March 2020*
10. *Appendix A16 in the ICMA Primary Market Handbook provides standard language that may be used in prospectuses where the issuer wishes to consent, in accordance with Article 5(1) of the Prospectus Regulation, in the context of a Non-Exempt Offer, to the use of the prospectus in a subsequent resale of securities or final placement of securities through financial intermediaries.* *March 2020*

11. *Issuers may want to consider whether these legends should be included in retail programmes as well as wholesale programmes to enable the use of the wholesale final terms in relation to admission of securities to a “qualified investor only” EEA or UK regulated market, or segment of a regulated market, under a retail programme.* March 2020
12. *This selling restriction is included to reflect the fact that Section 19 of the FSMA effectively prohibits any person other than an authorised person permitted to accept deposits under the FSMA from taking deposits in the UK by way of business. Under the Regulated Activities Order, most securities issues do not constitute deposits. However, notes with a maturity of less than 1 year must have a minimum denomination of £100,000 (or equivalent) or more AND must be issued to professionals only, so as not to constitute deposits. This provision should be deleted if notes which have a maturity of less than one year cannot be issued under the programme, in the case of a programme, or if the notes have a maturity of one year or more, in the case of a standalone debt issuance, or in any event if the issuer is an authorised person permitted to accept deposits or an exempt person under the FSMA.* September 2018
13. *If there is only an issuer which is an authorised person, replace “does not” with “would not, if the Issuer was not an authorised person,”. If there is both an issuer and a guarantor and only one of them is authorised, insert after “does not” the words “or, in the case of the [Issuer / Guarantor], would not, if it was not an authorised person,”.* September 2018
14. *Because a Prospectus Regulation selling restriction is not required for issues of notes with a denomination of EUR 100,000 (or equivalent) or more, paragraphs (a)(iii) and (b) (which relate to the Prospectus Regulation public offer regime) do not need to be included for issues of notes with a denomination of EUR 100,000 (or equivalent) or more.* March 2020
15. *Because a Prospectus Regulation selling restriction is not required for issues of notes with a denomination of EUR 100,000 (or equivalent) or more, the third limb of the definition of retail investor (which relates to the Prospectus Regulation public offer regime) does not need to be included for issues of notes with a denomination of EUR 100,000 (or equivalent) or more.* March 2020
16. *The reference to supplementing a prospectus pursuant to Article 23 may be deleted in circumstances where no prospectus is being or has been published (including for admission to trading purposes) that could be supplemented. For instance, it may not be relevant in a standalone transaction where all offers are to be made on an exempt basis and the securities are to be listed on an exchange-regulated market such as the Euro MTF.* March 2020
17. *Insert desired wording, for instance “[date]” or “[date] or such later date as the Issuer may permit”.* September 2018