

Appendix A13b

Selling restrictions and legends (UK)

Appendix A13b – Selling restrictions and legends (UK)

Part I - Introduction

- 1.1 These ICMA suggested debt selling restrictions and legends are for use in connection with offerings in the UK. *November 2021*
- 1.2 This note identifies standard forms of selling restriction and legend that deal with Regulation (EU) No 1286/2014 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018 (the “**EUWA**”) (the “**UK PRIIPs Regulation**”), Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the EUWA (the “**UK Prospectus Regulation**”) and other UK securities laws to be used in relation to MTN programmes and standalone debt issues. *November 2021*
- 1.3 Certain types of sovereign, sovereign-guaranteed and other sovereign-related issuers are not subject to the UK PRIIPs Regulation and the UK Prospectus Regulation. For details, see Article 1(2)(b) and (d) of the UK Prospectus Regulation and Article 2(2)(b) of the UK PRIIPs Regulation. *November 2021*
- 1.4 In addition to the selling restrictions and the legend that deals with the UK PRIIPs Regulation, the following are set out: *November 2021*
- (a) an optional legend for inclusion in certain standalone prospectuses; and
 - (b) suggested legends for inclusion in standalone prospectuses and base prospectuses/final terms where low denomination notes are to be admitted to a UK qualified investor regulated market or segment only.
- 1.5 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 international 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. *November 2021*
- 1.6 The UK Prospectus Regulation public offer selling restriction reflects the requirements of the UK 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 the UK may be made. *November 2021*
- 1.7 Selling restrictions and legends addressing EEA securities laws are set out in Appendix A13. In relation to the UK PRIIPs Regulation selling restrictions and legends, the assumption is that if there are potentially sales in the UK it is likely that there will also potentially be sales in the EEA and vice versa such that the prohibition of sales to UK retail investors and the prohibition of sales to EEA retail investors would both be included (unless turned off under Option 2 set out in Section 2.2 below). *June 2022*

Note that the scope of what is deemed "packaged" may be different in the UK compared to in the EU. See DISC 2.2 in the FCA Handbook. DISC was introduced into the FCA Handbook on 25 March 2022 but is subject to the DISC TP1 transitional provisions until 31 December 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](#).

In addition, 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.

1.8 Parties may also wish to consider the potential applicability and impact of the UK product governance regime and the MiFID II product governance regime. See Appendix A12b and Appendix A12a for suggested language.

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1.9 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).

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Part II – MTN programmes

2.1 UK PRIIPs Regulation selling restriction and legend (Option 1) and other UK securities laws

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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 UK retail investors in respect of all issuances under the programme.

If this selling restriction is included, there is no need for a separate UK Prospectus Regulation public offer selling restriction.

UNITED KINGDOM

Prohibition of sales to 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 United Kingdom. For the purposes of this provision:

¹ Include this language where the base prospectus/offering circular includes a pro forma pricing supplement.

Consequently no key information document required by Regulation (EU) No 1286/2014 as it forms part of domestic law by virtue of the EUWA (the “**UK PRIIPs Regulation**”) for offering or selling the Notes or otherwise making them available to retail investors in the UK has been prepared and therefore offering or selling the Notes or otherwise making them available to any retail investor in the UK may be unlawful under the UK PRIIPs Regulation.⁴⁰

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

See item 2.4 in Appendix A13, which can be used without amendment for the purposes of UK Prospectus Regulation Article 17.

2.5 Legends related to notes which are to be traded only on a specific segment of the London Stock Exchange’s main market to which only qualified investors can have access

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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 UK 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 a specific segment of the London Stock Exchange’s main market to which only qualified investors can have access will be issued under the programme.⁴¹

Note that although a base prospectus drawn up on the above basis will be UK 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 specific segment of the London Stock Exchange’s main market 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.

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

[[Furthermore, this]]⁴² [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 a specific segment of the London Stock Exchange’s main market to which only qualified investors (as defined in the UK 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 pursuant to an exemption under section 86 of the FSMA.

⁴⁰ Square brackets around this legend are only required in pro forma final terms/pricing supplement in base prospectuses/offering circulars.

⁴¹ 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 specific segment of the London Stock Exchange’s main market under a retail programme.

⁴² Use “Furthermore, this” if this legend follows the corresponding EEA 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 (set out in item 2.5 of Appendix A13). Otherwise, use “This”.

pursuant to an exemption under the FSMA from the requirement to publish a prospectus for offers of Notes. Accordingly any person making or intending to make an offer in the United Kingdom 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 section 85 of the FSMA⁶⁷ or supplement a prospectus pursuant to Article 23 of [Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the EUWA]⁶⁸, 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 "**UK Prospectus Regulation**" means Regulation (EU) 2017/1129, as it forms part of domestic law by virtue of the EUWA.]

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3.4 Legend related to notes which are to be traded only on a specific segment of the London Stock Exchange's main market to which only qualified investors can have access

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 UK Prospectus Regulation summary requirement and addressing the disclosure requirements in the wholesale non-equity annexes in Delegated Regulation (EU) 2019/980 as it forms part of domestic law by virtue of the EUWA, and the notes to be issued have a denomination of less than €100,000 (or equivalent) and are to be traded only on a specific segment of the London Stock Exchange's main market to which only qualified investors can have access.

Note that although a prospectus drawn up on the above basis will be UK 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 specific segment of the London Stock Exchange's main market 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 a specific segment of the London Stock Exchange's main market to which only qualified investors (as defined in the UK Prospectus Regulation) can have access and shall not be offered or sold to non-qualified investors.

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3.5 Selling restrictions addressing additional UK securities laws

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

⁶⁷ See footnote 2

⁶⁸ See footnote 15