

Appendix A8

Final terms and pricing supplement

be noted that there remain potential local law issues in individual EEA Member States, including in relation to local market practices or competent authority approaches which may mean that modifications to the pro formas may be appropriate. The endnotes to the pro formas aim to give some further guidance in this regard.

4. The purpose of the pro formas is to assist market efficiency by providing a generally accepted standard format and to assist the market with the application of the requirements of the Prospectus Regulation and the UK Prospectus Regulation. They are an assessment of the legal requirements and practices but are subject to change as actual practice develops. *March 2022*

5. The pro formas have not been approved by any EEA competent authority or the FCA. They are not legal advice and it is for issuers and their advisers to decide how to comply with the requirements in the context of the provisions of their programmes and the characteristics of particular drawdowns under them, as well as applicable national laws and regulations. For example, in some jurisdictions such as Germany, it may not be considered possible or advisable to use ISDA Determination for floating rate notes or it may be necessary to set out relevant definitions in full because the ISDA Definitions are not publicly available. *March 2022*

6. The pro formas are intended to be as helpful as possible at the time of their publication. They may not, however, contain all language appropriate in every situation. In particular, when using the ICMA pro formas to assist with the production of pro forma final terms within a base prospectus, it is important to check that all amendments and/or additions necessary are made in order that the pro formas conform to the conditions of the bonds and other aspects of the base prospectus. For example:
 - (a) language relating to the "Prohibition of Sales to EEA Retail Investors" and "Prohibition of Sales to UK Investors" in the pro formas is intended to interact with any PRIIPs Regulation and UK PRIIPs Regulation selling restrictions and legends set out in the base prospectus (see further Appendix A13 and Appendix A13b);
 - (b) additional items may be required in the Screen Rate Determination section where the programme caters for issuance of securities referencing risk-free rates (such as SOFR, SONIA or €STR);
 - (c) in relation to ISDA Determination provisions, the pro formas include references to the 2021 ISDA Interest Rate Derivatives Definitions (the **2021 ISDA Definitions**) as well as to the 2006 ISDA Definitions, with the ability to switch between the two options. It is important to check that references to relevant definitions in the 2021 ISDA Definitions are included in the conditions of the securities and that the pro formas conform to those conditions. Note also that additional items may be required depending on the particular floating rate option being referenced. The 2021 ISDA Definitions-related items in the pro formas only envisage floating rate options which are included in the 2021 ISDA Definitions Floating Rate Matrix.*March 2022*

7. In relation to issues of notes with low denominations, parties may wish to 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 *June 2022*

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 TP1 transitional provisions until 31 December 2022.

8. In relation to floating rate notes referencing risk-free rates (such as SOFR, SONIA or €STR) with either Screen Rate Determination or ISDA Determination, market participants may wish to note Section 3 of [ICMSA Bulletin 200120/47](#), including as regards the minimum number of days to be specified for any lookback period. *March 2022*
9. The numbering of the pro formas is designed to retain a reference to all material items while producing a final document which is as short as possible. Where a heading requires a number of additional items to be included, these should be in the form of sub-paragraphs designated (i), (ii) and so on, without the numbering being affected. *March 2020*
10. Issuers and their advisers should be aware that if securities are offered to the public on a non-exempt basis in the EEA or admitted to trading on an EEA regulated market, it is the issuer's responsibility to ensure that final terms are (a) filed with the competent authority that approved the base prospectus as soon as practicable and, where possible, before the beginning of the public offer or admission to trading, in accordance with Article 8(5) of the Prospectus Regulation and (b) published in accordance with Article 21 of the Prospectus Regulation and Article 10 of Commission Delegated Regulation (EU) 2019/979. Corresponding requirements apply under the UK Prospectus Regulation regime to securities that are offered to the public on a non-exempt basis in the UK or admitted to trading on a UK regulated market (the London Stock Exchange's main market). *March 2022*
11. When forwarding final terms to a relevant EEA competent authority or the FCA, issuers, their agents or advisers should take care to ensure that the authority is aware of the purpose of the filing and in particular whether it is intended that the securities are to be admitted to trading on an EEA regulated market or the London Stock Exchange's main market, as applicable, and, if so, from what date. Final terms should not be submitted to an EEA competent authority or the FCA without specific instructions to do so and a clear understanding of the purpose of that submission. Application for admission to trading and/or submission in respect of a non-exempt offer of notes should not be made in circumstances where a supplement to the base prospectus is required until such time as the supplement has been approved and published in accordance with the Prospectus Regulation and/or the UK Prospectus Regulation. *March 2022*
12. It may also be appropriate to include a pro forma pricing supplement in the base prospectus where an issuer envisages issuing securities in a scenario where the Prospectus Regulation and the UK Prospectus Regulation do not apply (i.e. where securities are not being admitted to trading on an EEA regulated market or the London Stock Exchange's main market and are being offered on an exempt basis in the EEA and UK). *March 2022*