

Appendix A13

Selling restrictions and legends (EEA PRIIPS Regulation, EEA Prospectus Directive, UK)

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

Part I – Introduction

- 1.1** These ICMA suggested debt selling restrictions and legends are for use in connection with offerings in the United Kingdom and EEA Member States.¹ Where offerings are contemplated in EEA Member States where implementing national measures are not in conformity with the Prospectus Directive, users should seek local legal advice to confirm whether additional or alternative selling restrictions are required. This ICMA language may require amendment in due course to reflect the UK's withdrawal from the European Union and/or the full implementation of the Prospectus Regulation in July 2019. *September 2018*
- 1.2** This note identifies: *September 2018*
- (a) standard forms of selling restriction and legend that deal with the PRIIPs Regulation;
 - (b) standard forms of PD public offer selling restriction that are appropriate for the UK and potentially many other Member States of the EEA² that have implemented the Prospectus Directive;
 - (c) standard forms of PD qualified investor selling restriction that are appropriate for certain UKLA approved prospectuses; and
 - (d) standard UK selling restriction language that deals with non-Prospectus Directive related securities laws,
- to be used in relation to MTN programmes and standalone debt issues. In addition to the selling restrictions and the legend that deals with the PRIIPs Regulation, an optional legend for inclusion in certain standalone prospectuses and suggested disclosure relating to the conditions for determining the price and amount of notes to be issued under an MTN programme is set out.
- 1.3** 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. *September 2018*

1.4

The PD public offer selling restriction reflects the requirements of the Prospectus Directive, as amended or superseded. 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 for which offers in the United Kingdom may be made. The ICMA also understands that they are appropriate for most MTN programmes and standalone debt issues for which offers in many other EEA Member States may be made, in particular since the Prospectus Directive was intended to be a maximum harmonisation directive creating a uniform approach to public offer regulation throughout the EEA. However, it should be noted that there remain potential local law issues in individual EEA Member States, including in relation to the particular implementation of the Prospectus Directive in those Member States, which may mean that separate and/or additional selling restrictions may be appropriate. 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.

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1.5

Parties may also wish to consider the impact of the MiFID II product governance regime. Information 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/>.

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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 retail investors in respect of all issuances under the programme.

If this selling restriction is included, do not include the PD public offer or qualified investor selling restrictions set out in 2.3 and 2.4 below.

Prohibition of Sales to EEA 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)]³ in relation thereto to any retail investor in the European Economic Area. 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 2002/92/EC (as amended or superseded, the “**Insurance Mediation Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or
 - (iii) not a qualified investor as defined in Directive 2003/71/EC (as amended or superseded, the “**Prospectus Directive**”)⁴; 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 the Notes⁵.

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 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**”). 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 2002/92/EC (as amended or superseded, the “**Insurance Mediation Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (iii) not a qualified investor as defined in Directive 2003/71/EC (as amended or superseded, the “**Prospectus Directive**”)⁶. 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 has been prepared and therefore offering or selling the Notes or otherwise making them available to any retail investor in the EEA may be unlawful under the PRIIPs Regulation.

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2.2

PRIIPs Regulation selling restriction and legend – Option 2.

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 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 retail investors and/or (2) “packaged” issues under programme that will be sold to EEA retail investors with a PRIIPs Regulation KID.

If this option is used, also include the PD public offer or qualified investor selling restriction set out in 2.3 and 2.4 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 Retail Investors” in:

- *Appendix A8, Part III (Pro Forma 1), item 8 of Part B;*
- *Appendix A8, Part VI (Pro Forma 2), item 6 of Part B; and*
- *Appendix A8, Part IX (Pro Forma 3), item 5 of Part B.*

Prohibition of Sales to EEA Retail Investors

Unless the Final Terms [(or Pricing Supplement, as the case may be)]³ in respect of any Notes specifies the “Prohibition of Sales to EEA 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)]³ in relation thereto to any retail investor in the European Economic Area. 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 2002/92/EC (as amended or superseded, the “**Insurance Mediation Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or
 - (iii) not a qualified investor as defined in Directive 2003/71/EC (as amended or superseded, the “**Prospectus Directive**”)⁴; 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 the Notes.⁵

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 retail investors for any other reason.*

[[IMPORTANT – EEA RETAIL INVESTORS] / [PROHIBITION OF SALES TO EEA RETAIL INVESTORS]]⁸ - [If the Final Terms [(or Pricing Supplement, as the case may be)]³ in respect of any Notes includes a legend entitled “Prohibition of Sales to EEA Retail Investors”, the]7/[The]⁸ 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**”). 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 2002/92/EC (as amended or superseded, the “**Insurance Mediation Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (iii) not a qualified investor as defined in Directive 2003/71/EC (as amended or superseded, the “**Prospectus Directive**”) ⁶. 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 has been prepared and therefore offering or selling the Notes or otherwise making them available to any retail investor in the EEA may be unlawful under the PRIIPs Regulation.]⁹

2.3

PD 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 PD selling restriction is not required);*
- *the programme contains a blanket prohibition on the issue of notes, whether admitted to trading on a regulated market in a Member State or not, with a denomination of less than €100,000 or equivalent (in which case, a PD selling restriction is not required); and/or*
- *the UKLA is approving the base prospectus and notes may be issued with denominations that are less than €100,000 or equivalent and the base prospectus has not been prepared in accordance with the requirements of UKLA Technical Note 632.1 (in which case, the PD qualified investor selling restriction set out at 2.4 below should be used).*

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, sub-paragraph (a) of the selling restriction should be deleted as it is not appropriate for such a base prospectus. 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: “(d) at any time if the denomination per [Note / unit of Notes] being offered amounts to at least €100,000 (or equivalent);”.

If the Final Terms [(or Pricing Supplement, as the case may be)]³ in respect of any Notes specifies the “Prohibition of Sales to EEA Retail Investors” as “Not Applicable”, in relation to each Member State of the European Economic Area² which has implemented the Prospectus Directive (each, a **“Relevant Member State”**), each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the **“Relevant Implementation Date”**) 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 Member State except that it may, with effect from and including the Relevant Implementation Date, make an offer of such Notes to the public in that Relevant Member 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 3(2) of the Prospectus Directive in that Relevant Member 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 Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, provided that any such prospectus has subsequently been completed by the final terms contemplating such Non-exempt Offer, in accordance with the Prospectus Directive, in the period beginning and ending on the dates specified in such prospectus or final terms, as applicable¹⁰ and the Issuer has consented in writing to its use for the purpose of that Non-exempt Offer¹¹;
- (b) at any time to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- (c) at any time to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), 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 3(2) of the Prospectus Directive,

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 Directive, or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression an “**offer of Notes to the public**” in relation to any Notes in any Relevant 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 the Notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, the expression “**Prospectus Directive**” means Directive 2003/71/EC (as amended or superseded) and includes any relevant implementing measure in the Relevant Member State.

PD qualified investor selling restriction for certain UKLA approved prospectuses.

This selling restriction should only be used where:

- the PRIIPs Regulation selling restriction and legend – Option 1 (set out at 2.1 above) is **not** included in the programme; and
- the UKLA is approving the base prospectus and notes may be issued with denominations that are less than €100,000 or equivalent and the base prospectus has not been prepared in accordance with the requirements of UKLA Technical Note 632.1.

If the Final Terms [(or Pricing Supplement, as the case may be)]³ in respect of any Notes specifies the “Prohibition of Sales to EEA Retail Investors” as “Not Applicable”, in relation to each Member State of the European Economic Area² which has implemented the Prospectus Directive (each a “**Relevant Member State**”), each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State it has not made and will not make an offer of Notes which have a minimum denomination of less than €100,000 (or equivalent in another currency) except that it may make an offer of such Notes at any time to any legal entity which is a qualified investor as defined in the Prospectus Directive.

For the purposes of this provision, the expression “**Prospectus Directive**” means Directive 2003/71/EC (as amended or superseded) and includes any relevant implementing measure in the Relevant Member State.

Selling restrictions addressing additional United Kingdom securities laws.

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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.

Conditions for determining price to be included in the base prospectus (PD Article 8).

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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.

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 retail investors for any other reason. Otherwise, one of the PD exempt public offer, PD non-exempt public offer or PD qualified investor selling restriction set out in 3.2, 3.3 or 3.4 should be used, if needed.

Selling restriction

Prohibition of Sales to EEA 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. 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 2002/92/EC (as amended or superseded, the “**Insurance Mediation Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or
 - (iii) not a qualified investor as defined in Directive 2003/71/EC (as amended or superseded, the “**Prospectus Directive**”)⁴; 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 the Notes¹⁴.

Legend

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

PROHIBITION OF SALES TO EEA 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**”). 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 2002/92/EC (as amended or superseded, the “**Insurance Mediation Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (iii) not a qualified investor as defined in Directive 2003/71/EC (as amended or superseded, the “**Prospectus Directive**”)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 has been prepared and therefore offering or selling the Notes or otherwise making them available to any retail investor in the EEA may be unlawful under the PRIIPs Regulation.

3.2

PD exempt public offer selling restriction and optional legend.

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This selling restriction should be used (and, excluding circumstances where the UKLA is approving the prospectus, the optional legend is appropriate) where:

- the PRIIPs Regulation selling restriction and legend (set out at 3.1 above) are **not** being used;
- the notes to be issued have a denomination of less than €100,000 or equivalent; and
- if the UKLA is approving the prospectus, the prospectus has been prepared in accordance with the requirements of UKLA Technical Note 632.1.

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 Area² which has implemented the Prospectus Directive (each, a “**Relevant Member State**”), each Manager has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the “**Relevant Implementation Date**”) 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 Member State other than:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), 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 3(2) of the Prospectus Directive,

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 Directive [or supplement a prospectus pursuant to Article 16 of the Prospectus Directive]¹⁶.

For the purposes of this provision, the expression an “**offer of Notes to the public**” in relation to any Notes in any Relevant 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 the Notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, the expression “**Prospectus Directive**” means Directive 2003/71/EC (as amended or superseded) and includes any relevant implementing measure in the Relevant Member State.

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 which has implemented the Prospectus Directive (each, a “**Relevant Member State**”) will be made pursuant to an exemption under the Prospectus Directive from the requirement to publish a prospectus for offers of Notes. Accordingly any person making or intending to make an offer in that Relevant Member 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 Directive [or supplement a prospectus pursuant to Article 16 of the Prospectus Directive]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 Directive**” means Directive 2003/71/EC (as amended or superseded) and includes any relevant implementing measure in the Relevant Member State.

This selling restriction should be used (and, excluding circumstances where the UKLA is approving the prospectus, 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;*
- *the prospectus has been approved and, if relevant, passported for the purposes of PD non-exempt public offers in one or more EEA Member States; and*
- *if the UKLA is approving the prospectus, the prospectus has been prepared in accordance with the requirements of UKLA Technical Note 632.1.*

Selling restriction

In relation to each Member State of the European Economic Area² which has implemented the Prospectus Directive (each, a **“Relevant Member State”**), each Manager has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the **“Relevant Implementation Date”**) 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 Member State other than the offers contemplated in the Prospectus in [name(s) of Member 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 Member State *where prospectus will be approved*] and published [and notified to the relevant competent authorit(y)(ies)] in accordance with the Prospectus Directive until [...]¹⁷, and provided that the Issuer has consented in writing to use of the Prospectus for any such offers, except that it may, with effect from and including the Relevant Implementation Date, make an offer of such Notes to the public in that Relevant Member State:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), 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 3(2) of the Prospectus Directive,

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 Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression an “**offer of Notes to the public**” in relation to any Notes in any Relevant 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 the Notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression “**Prospectus Directive**” means Directive 2003/71/EC (as amended or superseded) and includes any relevant implementing measure in the Relevant Member State.

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 which has implemented the Prospectus Directive (each, a “**Relevant Member 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 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 Directive, and in respect of which the Issuer has consented in writing to the use of the [Offering Circular / Prospectus]¹¹, will be made pursuant to an exemption under the Prospectus Directive from the requirement to publish a prospectus for offers of Notes. Accordingly any person making or intending to make an offer in that Relevant 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 Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive, 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 Directive**” means Directive 2003/71/EC (as amended or superseded) and includes any relevant implementing measure in the Relevant Member State.

PD qualified investor selling restriction for certain UKLA approved prospectuses.

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This selling restriction should only be used where:

- the PRIIPs Regulation selling restriction and legend (set out at 3.1 above) is **not** being used;
- the notes to be issued have a denomination of less than €100,000 or equivalent; and
- the UKLA is approving the prospectus and the prospectus has not been prepared in accordance with the requirements of UKLA Technical Note 632.1.

In relation to each Member State of the European Economic Area² which has implemented the Prospectus Directive (each, a “**Relevant Member State**”), each Manager has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State 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] except that it may make an offer of such Notes at any time to any legal entity which is a qualified investor as defined in the Prospectus Directive.

For the purposes of this provision, the expression “**Prospectus Directive**” means Directive 2003/71/EC (as amended or superseded) and includes any relevant implementing measure in the Relevant Member State.

Selling restrictions addressing additional United Kingdom securities laws.

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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. *As of the date of publication of these selling restrictions, all EEA Member States have implemented the Prospectus Directive into national law. In the case of further enlargement of the European Union and EEA, the PD-related selling restrictions should be used with caution in connection with new Member States, which may not have implemented the Prospectus Directive into national law in the period immediately following accession.* September 2018
2. *The EEA is the EU plus Iceland, Norway and Liechtenstein. Note that there may be new entrants to the EEA and therefore the concept of “Relevant Member State” still has purpose.* September 2018
3. *Include this language where the base prospectus/offering circular includes a pro forma pricing supplement.* September 2018
4. *The three limbs and paragraph (b) have been included to ensure it is clear how both the PD public offer regime (for securities with a denomination of less than EUR 100,000 or equivalent) and the PRIIPs Regulation are being addressed.* September 2018
5. *Because a PD 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 PD public offer regime) do not need to be included where the programme contains such blanket prohibition.* September 2018
6. *Because a PD 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 PD public offer regime) does not need to be included where the programme contains such blanket prohibition.* September 2018
7. *To be included with the legend on the front cover/inside front cover of base prospectus/offering circular.* September 2018
8. *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 retail investors for any other reason.* September 2018
9. *Square brackets around this legend are only required in pro forma final terms/pricing supplement in base prospectuses/offering circulars.* September 2018
10. *The prospectus or final terms therefore needs to include start and end dates.* September 2018

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| 11. | <i>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 3(2) of the Prospectus Directive, 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.</i> | September
2018 |
| 12. | <i>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.</i> | September
2018 |
| 13. | <i>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,”.</i> | September
2018 |
| 14. | <i>Because a PD 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 PD public offer regime) do not need to be included for issues of notes with a denomination of EUR 100,000 (or equivalent) or more.</i> | September
2018 |
| 15. | <i>Because a PD 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 PD public offer regime) does not need to be included for issues of notes with a denomination of EUR 100,000 (or equivalent) or more.</i> | September
2018 |
| 16. | <i>The reference to supplementing a prospectus pursuant to Article 16 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 or the Professional Securities Market.</i> | September
2018 |
| 17. | <i>Insert desired wording, for instance “[date]” or “[date] or such later date as the Issuer may permit”.</i> | September
2018 |