

The MiFID II product governance (PG)
and Packaged retail investment and insurance products Regulation (PRIIPs) regimes

January 2018: An approach for the Eurobond markets

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Explanatory note

Introduction

1. This paper seeks to recap on currently anticipated approaches, in the Eurobond markets (i.e. syndicated cross border bond issuance¹), to the PG and PRIIPs regimes coming into effect from January 2018. The approaches in this paper do not purport to be exhaustive or exclusive, but are anticipated to be useful to the extent transaction parties wish to minimise deal/syndicate-level deliberations, to maximise execution efficiency and speed (bearing in mind that many seasoned borrowers today are able to mandate a syndicate of underwriters to then price a benchmark-sized new issue within hours intra-day).

Background (PG/PRIIPs regime scope)

2. For PRIIPs, summarising substantially:
 - (a) any person manufacturing a “packaged” product, before it is “made available” to retail investors in the EEA, must publish a key information document (KID) and then regularly² review it, and if needed, publish a revised KID; and
 - (b) any person advising on, or selling, such a product must provide retail investors in the EEA with the KID in good time before those retail investors are bound by any contract or offer.

¹ Such issuance tends to be high nominal value / flow business: large in size (frequently up to US\$2bn and above) and followed by secondary trading generally independent of the borrower or its underwriters. In this respect, Euro Commercial Paper (ECP) can be seen as a very short term bond.

² Whenever any change significantly affects the KID’s content (or is likely to do so) and at least annually.

3. For PG, summarising substantially:

- (a) MiFID II persons that “create, develop, issue and/or design financial instruments, including when advising corporate issuers on the launch of new financial instruments”³ are “manufacturers” for PG purposes (with co-manufacturing documented in an agreement);
- (b) MiFID II persons that “offer or sell”⁴, or “offer or recommend”⁵, financial instruments are “distributors” for PG purposes (with no connection to the manufacturer being explicitly required);
- (c) manufacturers must identify, and communicate to distributors⁶, a compatible target market of investors and periodically review that target market;
- (d) distributors must identify their own target markets (by either adopting the manufacturer’s target market or refining it⁷),
all on a “proportionate” basis⁸.

4. Neither regime grandfathers pre-existing bonds⁹ and, distinctly, there has been limited consensus on what does not constitute a ‘packaged’ product.¹⁰ This is partly due to various public statements by the European Commission (EC) and ESMA that seemingly purport to widen the range of what might otherwise have been perceived as ‘packaged’.¹¹ Practically in the context of syndicated bond issuance, borrowers are understood to be manufacturers for both (i) PRIIPs and (ii) (if a MiFID II person) PG purposes (together with, as manufacturers for PG purposes only, any MiFID II person underwriters that satisfy the characteristics outlined under 3(a) above).

³ See [MiFID II Delegated Directive](#), Recital 15.

⁴ See [MiFID II Delegated Directive](#), Recital 15.

⁵ See [MiFID II](#) Art.16.3#6 and [MiFID II Delegated Directive](#), Art.10.1.

⁶ See [MiFID II Delegated Directive](#), Art.9.13: “Member States shall require investment firms to ensure that the provision of information about a financial instrument to distributors includes information about the appropriate channels for distribution of the financial instrument, the product approval process and the target market assessment and is of an adequate standard to enable distributors to understand and recommend or sell the financial instrument properly.”

⁷ See ESMA’s 2017 [Final Report: Guidelines on MiFID II Product Governance Requirements](#) (#38 on p.39): “When refining the manufacturer’s target market, the distributor should not deviate from the fundamental decisions made therein. [...] If, as a result of the process, the distributor comes to the conclusion that the target market of the manufacturer does not need to be refined, the distributor may use the manufacturer’s target market as it is.”

⁸ See [MiFID II Delegated Directive](#), Recital 18 and Art.9.1 and Art.10.1

⁹ It is not clear what the effect of this is. For PRIIPs purposes, it seems to mean that packaged products for which there is no KID cannot be sold to retail from 1 January 2018 and, for PG purposes, that distributors must apply the MiFID II product governance regime for distributions of all bonds from 3 January 2018, even though they were issued before PRIIPs/MiFID II came into force. But it also probably does not retrospectively impose PRIIPs duties on manufacturers of products issued prior to that date unless they do something after that date to make the product available to retail for the purposes of PRIIPs, given the presumption against retrospective intent of EU law without express provision to that effect. The same presumption, together with the repeated assertions that the PG regime is to be applied proportionately, equally lead to the probable conclusion that those who advised on deals before MiFID II comes into effect are not retrospectively made responsible for those issues as manufacturers under the PG regime.

¹⁰ See [ICMA Quarterly Report, Fourth Quarter 2016](#), p.26: “[...] there currently seems to be a market consensus that basic fixed or floating rate notes are not PRIIPs and that features such as an exotic currency, a guarantee, a put or a call would not, on their own, result in such securities being characterised as PRIIPs (to the extent made available to retail investors). However, consensus in relation to other vanilla debt securities may take some time to emerge.”

¹¹ Notably: (i) “Convertible bonds [...] In scope” ([ESMA 2014 DP](#), p.13); (ii) “if [...] performance caps and/or their return is linked in a non-linear way with the underlying interest rate, then they are in scope” ([ESMA 2014 DP](#), p.14); (iii) PRIIPs rules “are a response to a myriad of problems that retail investors faced in the past. For example, a consumer Ombudsman in one Member State recently found 12-year subordinated notes [...]” ([EC 2014 press release](#)); (iv) “SPVs (instruments issued by) [...] In scope” (albeit AIFMD/Solvency II context) ([ESMA 2014 DP](#), p.14); (v) potential KID risk indicator classification options including “perpetual” notes/instruments (ESMA 2015 DP, pp.35/36) (though query causality).

5. The PG and PRIIPs regimes pose significant practical/logistical challenges, including:
 - (a) borrower liability risk in producing a KID in the context of high value / flow transaction bonds¹² (let alone keeping it up to date); and
 - (b) underwriters' scope to execute extensive target market review procedures, particularly given (i) traditional market practice whereby borrowers engage underwriters for the initial issuance procedure only and (ii) bonds are traded in the secondary market by entities with no connection to the manufacturer.
6. Some of these concerns may abate with practical experience of the new regimes and any future helpful official guidance, but the approaches in this paper seek to account for them in the interim – by focusing on manufacturers (for PRIIPs and PG purposes):
 - (a) being clear that they are not facilitating availability to retail investors in the EEA of any products other than those that are clearly outside the scope of PRIIPs' "packaged" concept; and
 - (b) defining 'robust' target markets for PG purposes – i.e. that are likely to endure for the life of a bond and so substantially enhance the proportionality of the ongoing review process obligation, this seemingly being simplest¹³ in the first instance to outline in a wholesale context of professional investors (including eligible counterparties)¹⁴.

PG: Professional investors intended target market

7. On the basis that professional investors (defined as professional clients in MiFID II, including elective professionals and discretionary managers)¹⁵ possess the experience, knowledge and expertise to define their needs and objectives, make their own investment decisions and properly assess and manage the risks and returns that they incur¹⁶, they should be able to buy and hold any bond investment, regardless of specific product type (the detailed target market identification for the purposes of manufacturers' internal product governance procedures is set out in Schedule 1). Therefore, the manufacturer of a bond will have then complied with the PG regime if it ensures that measures are put in place on issue¹⁷ that are reasonably expected¹⁸ to result in sales only being made to such investors (and see further #8 below).
8. Because professional investors are appropriate target investors for all bond types, this will continue regardless of any changes over time which may impact individual bonds (including to

¹² See [ICMA Quarterly Report, Fourth Quarter 2016](#), p.43 under "Potential practical considerations for industry" and [ICMA Quarterly Report, First Quarter 2015](#), p.39 and [ICMA Quarterly Report, Third Quarter 2014](#), p.27 both under "Liability" and "KID purpose".

¹³ Given the commoditised context outlined in #1 and also noting ESMA's 2017 [Final Report: Guidelines on MiFID II Product Governance Requirements](#) (#20 on p.18): "ESMA therefore agrees, as set out in its guidelines, that for products designed for the wholesale market (professional clients and eligible counterparties as end clients) the overall assessment of the target market will likely be less comprehensive and detailed."

¹⁴ All references in this paper to "professional investors" include eligible counterparties and professional clients as defined in MiFID II.

¹⁵ Discretionary Managers are considered the end investor for the purposes of the target market analysis on the basis that they are the entity that makes the investment decision. At a European Commission PRIIPs Implementation Workshop on 11 July 2016, staff from the European Supervisory Authorities (EBA, EIOPA and ESMA) confirmed that discretionary managers are not retail clients. The workshop's [slide presentation on Cross-cutting PRIIPs KID RTS Questions](#), in response to Question 1 "What are typical examples where there is no KID obligation?", includes "portfolio manager, [...] in the name and for the account of a retail investor", which seems at least consistent with both a plain reading of the professional client concept under MiFID II and PRIIPs' policy focus on retail investor decision-making.

¹⁶ The lead-in to Annex II to [MiFID II](#) states "Professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs".

¹⁷ This relates to the 'robustness' aim noted in #6(b) and further detailed in #8.

¹⁸ The implemented measures need not be impregnable - i.e. that one or even several determined and persistent retail investors succeed in deliberately burrowing under them (without manufacturer acquiescence) should not call into question the reasonableness of the expectation that sales will only be made to professional investors.

the point of trading as distressed debt). In this respect, manufacturer target market reviews of the bond markets would most likely (if not inevitably) conclude that no target market changes are warranted – at least whilst the MiFID definition of professional clients endures. In this respect, feedback from third party ‘distributors’ (in the specific PG sense) would be expected to be without impact on the target market assessment.

9. A negative target market is unlikely for most bonds given diversification/portfolio considerations and absent the exercise of regulatory intervention powers. However, any such negative target market will be subject to consideration in the specific circumstances.
10. Specific Article 9.8 wording seems likely to be included in subscription agreements.¹⁹ Such wording seems likely to acknowledge the PG regime and to cover the product approval process (and notably the professional investors target market approach) and distribution channels. Schedule 5 sets out some example wording in this respect.

Options for measures reasonably expected to result in a target market encompassing sales to professional investors only

11. Various options are available for consideration in terms of measures that might be put in place on issue that could, in varying combinations according to the circumstances, be reasonably expected to result in a target market encompassing sales being made to professional investors only. Furthermore in this respect, manufacturers should not then be characterised as ‘making available’ to retail investors in the EEA any ‘packaged’ securities for PRIIPs purposes. Schedule 2 lists some of the more salient options.
12. Borrowers may wish to extend contractual selling restrictions to their underwriters in relation to the PRIIPs regime. See further Schedule 3.

Retail investors intended target market

13. ICMA is also separately considering potential target market approaches for retail investors. However, public offers conducted on behalf of EEA governments and related supranational organisations at least have presumably a mass retail target market (on an initial and ongoing basis) as a matter of public policy (EEA government and related supranational bonds are also exempted from the PRIIPs regime²⁰).

Scenario analysis

14. In relation to a manufacturer’s obligation to undertake scenario analysis and assess the risks of poor outcomes for end investor clients posed by bond instruments pursuant to [MiFID II Delegated Directive](#) Art.9.10, manufacturers may note that bonds are subject to a number of risks. These may include, among others, liquidity risk, interest rate risk, foreign exchange risk, volatility risk, macroeconomic or geopolitical risk, regulatory risk, market risk and risk of loss of capital. All of the foregoing risks are risks that a professional investor, given its knowledge,

¹⁹ See [MiFID II Delegated Directive](#), Art9.8: “[MiFID] firms, where they collaborate, including with entities which are not authorised and supervised in accordance with [MiFID II] or third-country firms, [...] [are] to outline their mutual responsibilities in a written agreement.”

²⁰ See PRIIPs Regulation Art.2.2((d) cross-referencing to Prospectus Directive Art.1(2)(b): “non-equity securities issued by a Member State or by one of a Member State’s regional or local authorities, by public international bodies of which one or more Member States are members, by the European Central Bank or by the central banks of the Member States” and Prospectus Directive Art.1(2)(d): “securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State’s regional or local authorities”.

experience and expertise, will be familiar with and will take into account when making its investment decision or choosing how to manage or hedge its exposure to such risk.

15. Manufacturers may wish to consider setting out in more detail the nature of the above risks, and any other risks that they identify that might impact investor outcomes, when undertaking scenario analysis.

Debt issuance programmes

16. For simplicity, the drafting set out in Schedules 3 to 5 relates to 'standalone' bond issuance rather than to debt issuance programmes and related drawdowns. ICMA will separately outline variants for use in a programme context.

Conclusion

17. ICMA will continue to focus on the PRIIPs and PG regimes with its member committees and keep members updated.

Schedule 1

Professional investors target market identification²¹

Professional investors are appropriate target investors for all bond types. This is because they are knowledgeable and experienced with sophisticated (and often confidential) investment strategies, consequently seeking unhindered access to the full range of bond market products and more specifically because of the factors set out below.

Target market identification using ESMA categories²²

Category	Rationale
The type of clients to whom the product is targeted:	Professional investors form a single category of investors that should (because of compliance with the other factors below) be able to invest freely in the full range of bond investments.
Knowledge and experience:	Professional investors have sufficient knowledge and experience of bonds to understand their nature.
Financial situation with a focus on the ability to bear losses:	Professional investors possess the experience, knowledge and expertise to properly assess the risks that they incur, including the risk of loss associated with bonds (they do not, as transferable securities, involve additional payment obligations that might exceed the amount invested - though such amount itself might be subject to loss in its entirety). Because of their experience, knowledge and expertise, they are also better able to avoid, manage or bear, the risk of total or partial loss of capital invested.
Risk tolerance and compatibility of the risk/reward profile:	Professional investors have a sufficient understanding of the risk/reward profile associated with bonds and sufficient ability to make an appropriate assessment of the associated risks in investing in them (generally and specifically).
Clients' objectives and needs:	Professional investors have carefully considered and developed investment objectives (which may have multiple elements and strands and which may vary from time to time) as well as a sufficient ability to determine their own bond investment objectives and the role of individual bonds within them; they also have a sufficient understanding of all specifications of an investment in bonds and how such an investment would fit within their needs and expectations.

In light of the above, all channels for distribution of the bonds to eligible counterparties and professional clients are appropriate.

²¹ Manufacturers may wish to consider this target market identification for use in their internal product governance procedures.

²² See ESMA's 2017 [Final Report: Guidelines on MiFID II Product Governance Requirements](#) (#18 on p.34)

Schedule 2

Options for measures reasonably expected to result in a target market encompassing sales to professional investors only

Various options are available for consideration in terms of measures that might be put in place on issue that could, in varying combinations according to the circumstances, be reasonably expected to result in a target market encompassing sales being made to professional investors only.

It is important, when considering these options, to distinguish between those that have a relatively short effect during the life of an issue and those that will remain effective from issue date to maturity. Accordingly, a good “mix” will include both shorter term elements, that relate to primary market (and immediate after-market) distribution (e.g. legends and in some cases selling restrictions) and those that have a long-term effect (e.g. legends, market segmentation, high denominations). It is also important to bear in mind that some market segments (likely to be of particular interest where there is a high proportion of non-MiFID participants) may involve other relevant dynamics or be *de facto* professional.

For practical purposes, the table below sets out a range of options in this respect.

#	<i>Measure</i>	<i>Comments</i>
1.	Legends in documents / communications - e.g. any new issue/screen announcement, prospectus, or final terms or pricing supplement	Addresses MiFID II product governance requirement to provide distributors with information on (i) the product approval process, (ii) the target market assessment and (iii) appropriate channels for distribution. Also useful, for issuers, investors and potential traders in secondary markets, as a signpost of the intended TM and any identified negative TM. See further Schedule 4.
2.	High denomination	Useful as it is universal in application (unlike many of the other ongoing elements), particularly where none of the other ongoing elements is available.
3.	Selling restrictions in any prospectus and any final terms or pricing supplement	Technically relevant only for general information purposes (being an operative arrangement for contractually transmitting any borrower limitations to the underwriters) – see further Schedule 3 in relation to PRIIPs. For investors and potential traders in secondary markets, this will not add further to the signposting provided by the legends cited in #1 (and will only address PRIIPs availability and not intended TM or negative TM).
4.	Absence of a retail prospectus	Useful initial signpost to extent this limits public offers (including in non-EEA jurisdictions under local law), though subject to a ‘limited circle’ (150 person) exemption under the EU’s Prospectus Directive. However, a low denomination prospectus approved under the Prospectus Directive should not be equated <i>per se</i> to a retail prospectus in this respect. Similarly, a base prospectus containing retail forms of final terms should not be equated to a retail prospectus for issues

#	Measure	Comments
		under wholesale final terms.
5.	Absence of a KID	Useful/relevant to the extent a bond is ‘packaged’ – it being then illegal to advise on, or sell, such a bond to retail investors in the EEA. And otherwise potentially a useful signpost of the intended TM to the extent such absence referenced in the various other line items / legends referenced in this Schedule.
6.	Admission to “qualified investor” segment on an EEA regulated market (RM)	Useful from the 2019 implementation of the Prospectus Regulation – it being then illegal to sell a bond admitted to such a segment to retail investors absent a retail prospectus. ²³ And otherwise useful as an initial and ongoing signpost of the intended TM. ²⁴
7.	Counterparty procedures (including in terms of any secondary trading involvement)	Any relevant references in convenient bilateral communications or documentation (such as terms of business, investor letters) and any relevant counterparty diligence, including in a relationship / non-transactional context, may assist in providing communication around the identified target market and onward distribution.

²³ [Prospectus Regulation](#), Art.5.2: “where a prospectus relates to the admission to trading on a regulated market of non-equity securities that are to be traded only on a regulated market [...] to which only qualified investors can have access for the purposes of trading in such securities, the securities shall not be resold to non-qualified investors, unless a prospectus is drawn up in accordance with this Regulation that is appropriate for non-qualified investors”.

²⁴ However, the admission to other, generic, segments of EEA RMs should not be equated per se to retail targeting/availability. To suggest otherwise would be inconsistent with: (a) [ESAs’ Q&A on the PRIIPs KID](#), General topics, Q.2 which states that a PRIIP manufacturer is not required to draw up a KID for a product listed on a RM when they have defined the product as meant only for non-retail investors; (b) public policy/CMU objectives: RMs have historically operated (and this continues in the goals of CMU) on the basis that they should include a wide and deep spectrum of investment choice; such variety is enabled, and users and suppliers of capital are encouraged to participate, because RMs bring the highest levels of initial (Prospectus Directive), ongoing periodic (Transparency Directive) and ad hoc (Market Abuse Regulation) disclosure, and so consequent investor protection; attaching PG/PRIIPs retail consequences would involve a significant risk that RMs (and their related protections) reduce in terms of size/range; (c) investor protection objectives: notably, ESMA has stated that only professional investors have the skill and resource set to analyse contingent convertibles instruments (CoCos), whilst producing KIDs would seem to facilitate their sale to retail investors; (d) other legislation: the Prospectus Directive expressly contemplates a wholesale alleviated disclosure regime for RM admissions.

Schedule 3

PRIIPs Regulation: ICMA suggested standalone 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, 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, the "Prospectus Directive");²⁵ 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 [Notes].²⁶

²⁵ 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.

²⁶ Because a PD selling restriction is not required for issues of bonds 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 bonds with a denomination of EUR 100,000 (or equivalent) or more.

Schedule 4

PG/PRIIPs Regulation legends

*Long-form – For prospectuses and other documents*²⁷

MIFID II product governance / Professional investors and ECPs only target market – Solely for the purposes of [the/each] manufacturer's product approval process, the target market assessment in respect of the [Notes] has led to the conclusion that: (i) the target market for the [Notes] is eligible counterparties and professional clients only, each as defined in [Directive 2014/65/EU (as amended, "MiFID II")][MiFID II]; and (ii) all channels for distribution of the [Notes] to eligible counterparties and professional clients are appropriate. Any person subsequently offering, selling or recommending the [Notes] (a "distributor") should take into consideration the manufacturer['s/s'] target market assessment; however, a distributor subject to MiFID II is responsible for undertaking its own target market assessment in respect of the [Notes] (by either adopting or refining the manufacturer['s/s'] target market assessment) and determining appropriate distribution channels.

[PRIIPs Regulation [/ Prospectus Directive]²⁸ / 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, 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, the "Prospectus Directive")²⁹. 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.]³⁰

Short-form – For new issue announcements

MiFID II professionals/ECPs-only [/ No PRIIPs KID]³¹ – Manufacturer target market (MIFID II product governance) is eligible counterparties and professional clients only (all distribution channels). [No PRIIPs key information document (KID) has been prepared as not available to retail in EEA.]³²

²⁷ This drafting relates to 'standalone' bond issuance. Consideration will need to be given to adapting this language for a debt issuance programme and related drawdowns.

²⁸ Because a PD selling restriction is not required for issues of bonds with a denomination of EUR 100,000 (or equivalent) or more, this reference to the Prospectus Directive does not need to be included for issues of bonds with a denomination of EUR 100,000 (or equivalent) or more.

²⁹ Because a PD selling restriction is not required for issues of bonds 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 bonds with a denomination of EUR 100,000 (or equivalent) or more.

³⁰ Do not include this legend if the prospectus/offering circular relates to an issue of bonds that clearly falls outside the scope of the PRIIPs Regulation.

³¹ Do not include the reference to "No PRIIPs KID" in relation to issues of bonds that clearly fall outside the scope of the PRIIPs Regulation.

³² Do not include the final sentence for issues of bonds that clearly fall outside the scope of the PRIIPs Regulation.

Very short-form – If needed by any third party market/trading screens

MiFID II professionals/ECPs-only [/ No PRIIPs KID]³³

³³ Do not include the reference to “No PRIIPs KID” in relation to issues of bonds that clearly fall outside the scope of the PRIIPs Regulation.

Schedule 5

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Article 9.8 wording

Sample language for inclusion in a Subscription Agreement

Set out below is a form of language to be considered for inclusion in subscription agreements to address the obligation in [MiFID II Delegated Directive](#) Art 9.8.³⁴ This language may need to be amended depending on the facts of the relevant offering and/or the specific product governance functions being carried out.

“Solely for the purposes of the requirements of Article 9(8) of the MIFID Product Governance rules under EU Delegated Directive 2017/593 (the “Product Governance Rules”) regarding the mutual responsibilities of manufacturers under the Product Governance Rules:

- a. each of [the Issuer [, the Guarantor[s]]³⁵ and]³⁶ the [Joint Lead Managers/[*identify Managers who are deemed to be MiFID manufacturers*]³⁷ (each a “Manufacturer” and together “the Manufacturers”) acknowledges to each other Manufacturer that it understands the responsibilities conferred upon it under the Product Governance Rules relating to each of the product approval process, the target market and the proposed distribution channels as applying to the [Notes] and the related information set out in the [Prospectus/announcements]³⁸ in connection with the [Notes]; and
- b. the Managers [and the Issuer/, the Issuer and the Guarantor[s]]³⁹ note the application of the Product Governance Rules and acknowledge the target market and distribution channels identified as applying to the [Notes] by the Manufacturers and the related information set out in the [Prospectus/announcements]⁴⁰ in connection with the [Notes].”

³⁴ [MiFID II Delegated Directive](#), Art.9.8: “[MiFID] firms, where they collaborate, including with entities which are not authorised and supervised in accordance with [MiFID II] or third-country firms, [...] [are] to outline their mutual responsibilities in a written agreement.”

³⁵ Include a reference to any guarantor that is a MiFID regulated entity and that has collaborated on the creation, development, issue and/or design of the bonds.

³⁶ Include a reference to the issuer where the issuer is a MiFID regulated entity.

³⁷ This should include all entities deemed to be MiFID manufacturers in the relevant note offering. This should be considered on a case by case basis and will vary depending on the facts of the relevant offering/which entities are collaborating with the issuer in the creation, development, issue and/or design of the bonds which (as described in the [ESMA Technical Advice of 19 December 2014](#)) includes entities “advising corporate issuers on the launch of the new securities”. In some cases (for example where the Joint Lead Managers are the entities substantively collaborating with the Issuer), it may be appropriate for the Joint Lead Managers to be considered the co-manufacturers.

³⁸ This drafting relates to ‘standalone’ bond issuance. Consideration will need to be given to adapting this language for drawdowns under a debt issuance programme.

³⁹ Include a reference to the issuer and/or any guarantor(s) here where such references are not included in the first sentence (e.g. because the issuer and/or any guarantor(s) are not MiFID regulated entities and do not recognise themselves as manufacturers and therefore falling within the scope of the first sentence).

⁴⁰ This drafting relates to ‘standalone’ bond issuance. Consideration will need to be given to adapting this language for drawdowns under a debt issuance programme.