**Product Governance Language and Legends for Programmes following ICMA 1 or ICMA 2 product governance approaches**

Please consider the requirements of the particular programme and make necessary changes to the proposed language below:

Language to be included near the beginning of a programme offering circular (whether wholesale or retail):

**MIFID II product governance / target market** – The Final Terms in respect of any Notes (or Pricing Supplement, in the case of Exempt Notes)[[1]](#footnote-2) will[[2]](#footnote-3) include a legend entitled “MiFID II Product Governance” which will outline the target market assessment in respect of the Notes and which channels for distribution of the Notes are appropriate. Any person subsequently offering, selling or recommending the Notes (a "distributor") should take into consideration the target market assessment; however, a distributor subject to [Directive 2014/65/EU (as amended, "MiFID II")/MiFID II] is responsible for undertaking its own target market assessment in respect of the Notes (by either adopting or refining the target market assessment) and determining appropriate distribution channels.

A determination will be made in relation to each issue about whether, for the purpose of the MiFID Product Governance rules under EU Delegated Directive 2017/593 (the “MiFID Product Governance Rules”), any Dealer subscribing for any Notes is a manufacturer in respect of such Notes, but otherwise neither the Arranger nor the Dealers nor any of their respective affiliates will be a manufacturer for the purpose of the MIFID Product Governance Rules.

*The below is only included for reference and reflects the current ICMA approaches (ICMA Option 1 or Option 2[[3]](#footnote-4)) to PRIIPs.*

**PRIIPs / IMPORTANT – EEA RETAIL INVESTORS** – [If the Final Terms in respect of any Notes (or Pricing Supplement, in the case of Exempt Notes) [[4]](#footnote-5) includes a legend entitled "Prohibition of Sales to EEA Retail Investors", the][[5]](#footnote-6) / [The][[6]](#footnote-7) Notes are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the European Economic Area (“EEA”). 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”)][[7]](#footnote-8). 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.

Language to be included in retail cascades wording in programme offering circular for **retail/low denomination** programmes:

*In the case of a retail/low denomination PD compliant programme offering circular consider including reference to the legends in the Final Terms in the retail cascades authorised offer or terms, for example, the following representation could be added to by the insertion of the underlined wording:*

“comply with the restrictions set out under "Subscription and Sale" in this Offering Circular which would apply if the relevant financial intermediary were a Dealer;

consider the relevant manufacturer’s target market assessment and distribution channels identified under the “MiFID II product governance” legend set out in the applicable Final Terms”

LegendS to be included at the top of the form of Final Terms for **wholesale/high denomination** PD compliant programme offering circulars[[8]](#footnote-9)

*The below legend is the “ICMA1” (professional investors and eligible counterparties (****ECPs****) only) legend.*

[[9]](#footnote-10) **[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. [*Consider any negative target market*][[10]](#footnote-11). 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.]

*The below is only included for reference and reflects the current ICMA approaches (ICMA Option 1 or Option 2[[11]](#footnote-12)) to PRIIPs.*

[**PRIIPs Regulation/[ Prospectus Directive/] 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, 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”)][[12]](#footnote-13). 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.]

LegendS to be included at the top of the form of Pricing Supplement for **wholesale/high denomination** PD compliant programme offering circulars[[13]](#footnote-14)

[[14]](#footnote-15)**[MIFID II product governance / target market** - [*appropriate target market legend to be included*]]

*The below is only included for reference and reflects the current ICMA approaches (ICMA Option 1 or Option 2[[15]](#footnote-16)) to PRIIPs.*

[**PRIIPs Regulation/[ Prospectus Directive/] 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, 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” ][[16]](#footnote-17)). 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.]

LegendS to be included at the top of each of the forms of Final Terms for **retail / low denomination** PD compliant programme offering circulars

*The below legends are the “ICMA1” (professional investors and eligible counterparties (****ECPs****) only) legend and “ICMA2” (retail) legend.*

[[[17]](#footnote-18)[**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. [*Consider any negative target market*][[18]](#footnote-19). 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.]

**OR**

[[19]](#footnote-20)[**MIFID II product governance / Retail investors, professional investors and ECPs 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, professional clients and retail clients, each as defined in [Directive 2014/65/EU (as amended, "MiFID II")][MiFID II]; ***EITHER*** [[20]](#footnote-21)[and (ii) all channels for distribution of the [Notes] are appropriate[, including investment advice, portfolio management, non-advised sales and pure execution services][[21]](#footnote-22)] ***OR*** [[22]](#footnote-23)[(ii) all channels for distribution to eligible counterparties and professional clients are appropriate; and (iii) the following channels for distribution of the [Notes] to retail clients are appropriate - investment advice[,/ and] portfolio management[,/ and][ non-advised sales ][and pure execution services][, subject to the distributor’s suitability and appropriateness obligations under MiFID II, as applicable]]. [*Consider any negative target market*][[23]](#footnote-24). 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[, subject to the distributor’s suitability and appropriateness obligations under MiFID II, as applicable][[24]](#footnote-25).]]

*The below is only included for reference and reflects the current ICMA Option 2 approach to PRIIPs.*

[**PRIIPs Regulation/[ Prospectus Directive/] 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, 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”). 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.]

LegendS to be included at the top of the form of Pricing Supplement for **retail /low denomination** PD compliant programme offering circulars

**[MIFID II product governance / target market** - [*appropriate target market legend to be included*]]

*The below is only included for reference and reflects the current ICMA Option 2 approach to PRIIPs.*

[**PRIIPs Regulation/[ Prospectus Directive/] 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, 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”). 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.]

Language to be included in Programme / Dealer Agreements[[25]](#footnote-26)

Each of the Dealers agrees that a determination will be made in relation to each issue about whether, for the purpose of the MiFID Product Governance rules under EU Delegated Directive 2017/593 (the “MiFID Product Governance Rules”), any Dealer subscribing for any Notes is a manufacturer in respect of such Notes, but that, otherwise, neither the Arranger nor the Dealers nor any of their respective affiliates will be a manufacturer for the purpose of the MIFID Product Governance Rules.

Language to be included in form of Subscription Agreement[[26]](#footnote-27)

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:

1. each of [the Issuer [, the Guarantor[s]][[27]](#footnote-28) and][[28]](#footnote-29) the [[Joint] Lead Manager[s]/[*identify Manager(s) who is/are deemed to be MiFID manufacturer(s)*][[29]](#footnote-30) (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 [Final Terms/Pricing Supplement/announcements] in connection with the [Notes]; and
2. the [Managers] [and the/, the][ Issuer[ and the Guarantor[s]][[30]](#footnote-31) note the application of the Product Governance Rules and acknowledge the target market and distribution channels identified as applying to the [Notes] by the Manufacturer[s] and the related information set out in the [Final Terms/Pricing Supplement/announcements] in connection with the [Notes].

1. If the programme includes a specific reference to Drawdown Prospectus, this should be reflected here. [↑](#footnote-ref-2)
2. Consider including “may” for a programme with a non-MiFID issuer and non-MiFID guarantor(s) to cater for circumstances where the managers in relation to the Notes are also not subject to MiFID and therefore there are no MiFID manufacturers. [↑](#footnote-ref-3)
3. In the case of PRIIPs option 2 there is flexibility to turn the prohibition on sales to retail in the EEA off if the Notes are not packaged or a KID is produced. PRIIPs Option 1 (where the prohibition on sales to retail in the EEA always applies) is unlikely to be included in a retail/low denomination programme offering circular. [↑](#footnote-ref-4)
4. If the programme includes a specific reference to Drawdown Prospectus, this should be reflected here. [↑](#footnote-ref-5)
5. To be included with the legend on the front cover/inside front cover of the base prospectus/offering circular for ICMA Option 2 approach to PRIIPs (there is flexibility to turn the prohibition on sales to retail in the EEA off if the Notes are not packaged or a KID is produced). [↑](#footnote-ref-6)
6. To be included with the legend on the front cover/inside front cover of the base prospectus/offering circular for ICMA Option 1 approach to PRIIPs (prohibition of sales to retail in the EEA always applies). [↑](#footnote-ref-7)
7. Because a Prospectus Directive 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. [↑](#footnote-ref-8)
8. This wording applies whether or not the programme follows PRIIPS option 1 (prohibition on sales to retail in the EEA always applies) or PRIIPs option 2 (there is flexibility to turn the prohibition on sales to retail in the EEA off if the Notes are not packaged or a KID is produced). [↑](#footnote-ref-9)
9. The brackets around this legend should only be retained in the form of Final Terms if “may” has been included in the language to be set out near the beginning of the offering circular. As indicated in footnote 2, the legend may not be necessary for a programme with a non-MiFID issuer and non-MiFID guarantor(s) if the managers in relation to the Notes are also not subject to MiFID and therefore there are no MiFID manufacturers. [↑](#footnote-ref-10)
10. ICMA 1 and ICMA 2 approaches envisage that a negative target market will be unlikely. At the time of the programme establishment/update consider what types of bonds may be issued and whether the flexibility to include a negative target market may be needed for relevant issuance. Note that a programme which only envisages vanilla issuance is unlikely to require a negative target market placeholder. If a negative target market is deemed necessary, wording along the following lines could be included: “The target market assessment indicates that Notes are incompatible with the needs, characteristic and objectives of clients which are [fully risk averse/have no risk tolerance or are seeking on-demand full repayment of the amounts invested].” [↑](#footnote-ref-11)
11. In the case of PRIIPs option 2 there is flexibility to turn the prohibition on sales to retail in the EEA off if the Notes are not packaged or a KID is produced. [↑](#footnote-ref-12)
12. Because a Prospectus Directive 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. [↑](#footnote-ref-13)
13. This wording applies whether or not the programme follows PRIIPS option 1 (prohibition on sales to retail in the EEA always applies) or PRIIPs option 2 (there is flexibility to turn the prohibition on sales to retail in the EEA off if the Notes are not packaged or a KID is produced). [↑](#footnote-ref-14)
14. The brackets around this legend should only be retained in the form of Pricing Supplement if “may” has been included in the language to be set out near the beginning of the offering circular. As indicated in footnote 2, the legend may not be necessary for a programme with a non-MiFID issuer and non-MiFID guarantor(s) if the managers in relation to the Notes are also not subject to MiFID and therefore there are no MiFID manufacturers. [↑](#footnote-ref-15)
15. In the case of PRIIPs option 2 there is flexibility to turn the prohibition on sales to retail in the EEA off if the Notes are not packaged or a KID is produced. [↑](#footnote-ref-16)
16. Because a Prospectus Directive 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. [↑](#footnote-ref-17)
17. Include this legend if following the ICMA 1 “all bonds to all professionals” target market approach. [↑](#footnote-ref-18)
18. ICMA 1 and ICMA 2 approaches envisage that a negative target market will be unlikely. At the time of the programme establishment/update consider what types of bonds may be issued and whether the flexibility to include a negative target market may be needed for relevant issuance. Note that a programme which only envisages vanilla issuance is unlikely to require a negative target market placeholder. If a negative target market is deemed necessary, wording along the following lines could be included: “The target market assessment indicates that Notes are incompatible with the needs, characteristic and objectives of clients which are [fully risk averse/have no risk tolerance or are seeking on-demand full repayment of the amounts invested].” [↑](#footnote-ref-19)
19. Include this legend if parties have agreed to a retail target market. This may be the case if (1) following the ICMA 2 retail approach which would only be the case in relation to a low denomination issue and for bonds which are not ESMA complex or certain ESMA complex bonds only (as explained in the ICMA 2 paper) (2) a more detailed bespoke target market assessment and review is intended or (3) an alternative proportionate approach is to be followed. [↑](#footnote-ref-20)
20. Include for bonds that are not ESMA complex. [↑](#footnote-ref-21)
21. This list may not be necessary, especially for bonds that are not ESMA complex where all channels of distribution may be appropriate. It reflects the list used in the examples in the ESMA Guidelines. [↑](#footnote-ref-22)
22. Include for certain ESMA complex bonds. This list may need to be amended, for example, if advised sales are deemed necessary. If there are advised sales, a determination of suitability will be necessary. In addition, if the Notes constitute “complex” products, pure execution services are not permitted to retail without the need to make the determination of appropriateness required under Article 25(3) of MiFID II. [↑](#footnote-ref-23)
23. ICMA 1 and ICMA 2 approaches envisage that a negative target market will be unlikely. At the time of the programme establishment/update consider what types of bonds may be issued and whether the flexibility to include a negative target market may be needed for relevant issuance. Note that a programme which only envisages vanilla issuance is unlikely to require a negative target market placeholder. If a negative target market is deemed necessary, wording along the following lines could be included: “The target market assessment indicates that Notes are incompatible with the needs, characteristic and objectives of clients which are [fully risk averse/have no risk tolerance or are seeking on-demand full repayment of the amounts invested].” [↑](#footnote-ref-24)
24. If the Notes constitute “complex” products, pure execution services are not permitted to retail without the need to make the determination of appropriateness required under Article 25(3) of MiFID II. If there are advised sales, a determination of suitability will be necessary. [↑](#footnote-ref-25)
25. We suggest including this paragraph as a new sub-clause under the “Status of the Dealer / Arranger” (or equivalent) clause. [↑](#footnote-ref-26)
26. Note this form of language may also be included in a dealer confirmation and dealer accession letter (for a note issue) where no subscription agreement is being entered into. [↑](#footnote-ref-27)
27. Include a reference to any guarantor that is a MiFID regulated entity and that may collaborate on the creation, development, issue and/or design of an issue of Notes under the programme. [↑](#footnote-ref-28)
28. Include a reference to the issuer where the issuer is a MiFID regulated entity. [↑](#footnote-ref-29)
29. This should be completed on a note issue with the names of 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 Notes 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. [↑](#footnote-ref-30)
30. Include a reference to the issuer and/or any guarantor(s) here where such references may not be included in the first sentence on a note issue (e.g. because the issuer and/or any guarantor(s) are not MiFID regulated entities and may not recognise themselves as manufacturers and therefore falling within the scope of the first sentence). [↑](#footnote-ref-31)