International
Capital
Market
Association

ICMA

**By e-mail**

Zurich, March 26, 2019

**To the members of the Association, and to ICMA Primary Market Handbook online subscribers and hard-copy registered holders**

**Amendments to the ICMA Primary Market Handbook**

Dear members, and subscribers and holders,

## 1. Introduction

ICMA is publishing amendments to:

- Recommendation R6.4, *Access to distribution;*
- Appendix A8, *Final terms and pricing supplement;*
- Appendix A13, *Selling restrictions and legends (EEA PRIIPS Regulation, EEA Prospectus Directive, UK);*
- Appendix 13a, Selling restrictions (Hong Kong and Singapore); and
- Appendix A16, *Sub-€100,000 denomination bonds under the EEA Prospectus Directive and retail cascade legends,*

in the ICMA Primary Market Handbook.

## 2. Purpose of the amendments to the ICMA Primary Market Handbook

The purposes of the amendments are:

- in the case of Recommendation R6.4, to clarify that the Recommendation remains subject to any issuer objection that is in writing;
- in the case of Appendices A8, A13 and A16, to include or update a notice that the standard language is being revised in the light of the UK's withdrawal from the European Union and draft revised language is available to ICMA members and Handbook subscribers on request;



**International Capital Market Association**
Dreikoenigstrasse 8
CH-8002 Zurich
**Phone:** +41 44 363 4222
**Fax:** +41 44 363 7772
**www.icmagroup.org**

- also in the case of just Appendix A8, to remove the free text option in relation to completing CFI and FISN information; and
- in the case of Appendix 13a, to update the form of Singapore selling restrictions set out in paragraph 2.3 further to the implementation of Singapore's Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) (Amendment) Regulations 2018.

## 3. Approval of the amendments to the ICMA Primary Market Handbook

Following earlier approval by ICMA's Primary Market Practices Committee (in the case of Recommendation R6.4) and ICMA's Legal and Documentation Committee (in the case of Appendix A13a), the ICMA Executive Committee approved the amendments to the ICMA Primary Market Handbook for publication.

## 4. The amendments to the ICMA Primary Market Handbook in light of EU and UK competition law

ICMA reviewed the amendments to the ICMA Primary Market Handbook and determined that the amendments to the ICMA Primary Market Handbook are unlikely to raise issues under EU or UK competition law.

## 5. Publication/distribution of the amendments to the ICMA Primary Market Handbook

The online version of the ICMA Primary Market Handbook on ICMA's website is being updated. A hard-copy update will be sent to the ICMA Primary Market Handbook hard-copy subscribers in due course.

## 6. The wording of the amendments to the ICMA Primary Market Handbook

The amendments to the ICMA Primary Market Handbook are attached to this circular.

Yours sincerely,





Martin Scheck
Chief Executive

Leland Goss
General Counsel

Attachment




International Capital Market Association

# Primary Market Handbook

Last updated March 2019

Insert 2019-03

# Chapter 6 - Allocation and allotment

## Timing of allotments

**R6.1** For a pot deal, final allotments, if any, to managers should be made not later than pricing of the transaction. For a retention deal see R5.4.

*Pot deals*
*September 2015*

## Selling group claw-back

**R6.2** For a retention deal, any claw-back from manager allotment further to selling group demand, should be determined pro rata to underwriting commitments.

*Retention deals*
*September 2015*

## Distribution disclosure

**R6.3** Any disclosure of distribution should:

(a) be agreed by the bookrunners in advance of being made; and

(b) occur on a public basis, even if not required under applicable law or regulation.

*September 2015*

## Access to distribution

**R6.4** For a pot deal, the bookrunner should (absent written issuer objection) give any other lead manager without responsibility for actively running the order book for that transaction access to the detailed distribution data for the transaction by close of business on the business day following the pricing of the transaction.

*Pot deals*
*March 2019*

# Appendix A8 - Final terms and pricing supplement

**The ICMA pro forma final terms and pricing supplement are being revised in the light of the UK's withdrawal from the European Union. Draft revised language is available from ICMA staff (legalhelpdesk@icmagroup.org) to ICMA members/Handbook subscribers on request.** *March 2019*


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## Part I - General Introduction

1. Below are suggested pro formas: *September 2018*

   (a) **Pro forma 1** - Final terms for medium term note programmes for use in connection with issues of securities with a denomination of less than €100,000 to be admitted to trading on an EEA regulated market and/or offered to the public in the EEA, based on the requirements of Annex V of the Prospectus Directive implementing Regulation;

   (b) **Pro forma 2** - Final terms for medium term note programmes for use in connection with issues of securities with a denomination of at least €100,000 to be admitted to trading on an EEA regulated market, based on Annex XIII of the Prospectus Directive implementing Regulation; and

   (c) **Pro forma 3** - A pricing supplement for medium term note programmes for use in connection with issues of securities which are not subject to the Prospectus Directive.

2. The pro formas have been prepared with the help of the ICMA members and a group of 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 2015*

3. The pro formas are appropriate for most medium term note programmes for which the base prospectus is approved in the United Kingdom. ICMA also understands that they are appropriate for most medium term note programmes for which the base prospectus is approved in many other EEA Member States, in particular since the Prospectus Directive was intended to be a maximum harmonisation directive creating a uniform approach to base prospectuses and final terms 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 or amendments to it in those Member States, or local market practices or competent authority approaches which may mean that modifications to the pro formas may be appropriate. The endnotes to the pro formas aim to give some further guidance in this regard. *September 2015*

4. The purpose of the pro formas is to assist market efficiency by providing a generally accepted standard format and to assist the market with the implementation of the requirements of the Prospectus Directive, Regulation and amendments made to them. They are an assessment of the legal requirements and practices but will be subject to change as actual practice develops. *September 2015*

5. The pro formas have not been approved by any competent authority. They are not legal advice and it is for issuers and their advisers to decide how to comply with the requirements in the context of the provisions of their programmes and the characteristics of particular drawdowns under them, as well as applicable national laws and regulations. *September 2015*

6. The pro formas are intended to be as helpful as possible at the time of their publication. They may not, however, contain all language appropriate in every situation. In particular, when using the ICMA pro formas to assist with the production of pro forma final terms within a base prospectus, it is important to check that all amendments and/or additions necessary are made in order that the pro formas conform to the conditions of the bonds and other aspects of the base prospectus. For example, language relating to the "Prohibition of Sales to EEA Retail Investors" in the pro formas is intended to interact with any PRIIPs Regulation selling restrictions and legends set out in the base prospectus. See further Appendix A13. *September 2018*

7. The numbering of the pro formas is designed to retain a reference to all material items while producing a final document which is as short as possible. Where a heading requires a number of additional items to be included, these should be in the form of sub-paragraphs designated (i), (ii) and so on, without the numbering being affected. *September 2015*

## 6. [*Floating Rate Notes only* - HISTORIC INTEREST RATES

*September 2015*

Details of historic [LIBOR/EURIBOR/*replicate other as specified in the Conditions*] rates can be obtained from [Reuters].]

*V 4.7 (ix) Cat C*

## 7. OPERATIONAL INFORMATION

*March 2019*

| | | |
|---|---|---|
| ISIN: | [ ] | *V 4.1 (ii) Cat C* |
| Common Code: | [ ] | |
| [CUSIP: | [ ]] | |
| [CINS: | [ ]] [26] | |
| CFI[26A]: | [See the website of the Association of National Numbering Agencies (ANNA) or alternatively sourced from the responsible National Numbering Agency that assigned the ISIN / Not Applicable / Not Available] | |
| FISN[26B]: | [See the website of the Association of National Numbering Agencies (ANNA) or alternatively sourced from the responsible National Numbering Agency that assigned the ISIN / Not Applicable / Not Available]<br><br>*(If the CFI and/or FISN is not required or requested, it/they should be specified to be "Not Applicable".)* | |
| Any clearing system(s) other than [DTC,] Euroclear Bank S.A./N.V. and Clearstream Banking, société anonyme and the relevant identification number(s): | [Not Applicable/*give name(s) and number(s)*] | *V 4.3 (ii) Cat C* |
| Delivery: | Delivery [against/free of] payment | *V 5.1.6 Cat C* |
| Names and addresses of additional Paying Agent(s) (if any): | [ ] | *V 5.4.2 Cat C* |

[Save for any fees payable to the [Managers/Dealers], so far as the Issuer is aware, no person involved in the offer of the Notes has an interest material to the offer. The [Managers/Dealers] and their affiliates have engaged, and may in the future engage, in investment banking and/or commercial banking transactions with, and may perform other services for, the Issuer [and the Guarantor] and [its/their] affiliates in the ordinary course of business. (*Amend as appropriate if there are other interests*)]

*[(When adding any other description, consideration should be given as to whether such matters described constitute "significant new factors" and consequently trigger the need for a supplement to the Prospectus under Article 16 of the Prospectus Directive.)]*[25]

## 4. [*Fixed Rate Notes only* – YIELD

*XIII 4.10(i) Cat C* *September 2015*

| | |
|---|---|
| Indication of yield: | [ ]<br>The yield is calculated at the Issue Date on the basis of the Issue Price. It is not an indication of future yield.] |

## 5. OPERATIONAL INFORMATION

*March 2019*

| | | |
|---|---|---|
| ISIN: | [ ] | *XIII 4.2(ii) Cat C* |
| Common Code: | [ ] | |
| [CUSIP: | [ ]] | |
| [CINS: | [ ]][26] | |
| CFI[26A]: | [See the website of the Association of National Numbering Agencies (ANNA) or alternatively sourced from the responsible National Numbering Agency that assigned the ISIN / Not Applicable / Not Available] | |
| FISN[26B]: | [See the website of the Association of National Numbering Agencies (ANNA) or alternatively sourced from the responsible National Numbering Agency that assigned the ISIN / Not Applicable / Not Available]<br>*(If the CFI and/or FISN is not required or requested, it/they should be specified to be "Not Applicable".)* | |

## PART B – OTHER INFORMATION

**1. LISTING**[20] *September 2015*

[Application has been made by the Issuer (or on its behalf) for the Notes to be listed on [*specify relevant market - note this must not be a regulated market*][20] with effect from [ ].] [Application is expected to be made by the Issuer (or on its behalf) for the Notes to be listed on [*specify relevant market - note this must not be a regulated market*][20] with effect from [ ].] [Not Applicable.]

*(Where documenting a fungible issue need to indicate that original Notes are already admitted to trading.)*

**[2. RATINGS**

Ratings: The Notes to be issued have been rated: *September 2015*

[S & P: [ ]]

[Moody's: [ ]]

[[Fitch: [ ]]

[[Other]: [ ]]

*(The above disclosure should reflect the rating allocated to Notes of the type being issued under the Programme generally or, where the issue has been specifically rated, that rating.)*]

**3. INTERESTS OF NATURAL AND LEGAL PERSONS INVOLVED IN THE ISSUE/OFFER** *September 2015*

[Save for any fees payable to the [Managers/Dealers], so far as the Issuer is aware, no person involved in the offer of the Notes has an interest material to the offer. The [Managers/Dealers] and their affiliates have engaged, and may in the future engage, in investment banking and/or commercial banking transactions with, and may perform other services for, the Issuer [and the Guarantor] and [its/their] affiliates in the ordinary course of business. (*Amend as appropriate if there are other interests*)]

**4. OPERATIONAL INFORMATION** *March 2019*

| | |
|---|---|
| ISIN: | [ ] |
| Common Code: | [ ] |
| [CUSIP: | [ ]][21] |
| [CINS: | [ ]] |

| | |
|---|---|
| CFI[21A]: | [See the website of the Association of National Numbering Agencies (ANNA) or alternatively sourced from the responsible National Numbering Agency that assigned the ISIN / Not Applicable / Not Available] |
| FISN[21B]: | [See the website of the Association of National Numbering Agencies (ANNA) or alternatively sourced from the responsible National Numbering Agency that assigned the ISIN / Not Applicable / Not Available]<br>*(If the CFI and/or FISN is not required or requested, it/they should be specified to be "Not Applicable".)* |
| Any clearing system(s) other than [DTC,] Euroclear Bank S.A./N.V and Clearstream Banking, société anonyme and the relevant identification number(s): | [Not Applicable/*give name(s) and number(s)*] |
| Delivery: | Delivery [against/free of] payment |
| Names and addresses of additional Paying Agent(s) (if any): | [ ] |
| [Intended to be held in a manner which would allow Eurosystem eligibility[22 23] | [Yes. Note that the designation "yes" simply means that the Notes are intended upon issue to be deposited with one of the ICSDs as common safekeeper [(and registered in the name of a nominee of one of the ICSDs acting as common safekeeper)] [*include this text for registered notes*] and does not necessarily mean that the Notes will be recognised as eligible collateral for Eurosystem monetary policy and intra day credit operations by the Eurosystem either upon issue or at any or all times during their life. Such recognition will depend upon the ECB being satisfied that Eurosystem eligibility criteria have been met.]/ |

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

**These ICMA suggested debt selling restrictions and legends are being revised in the light of the UK's withdrawal from the European Union. Draft revised language is available from ICMA staff (legalhelpdesk@icmagroup.org) to ICMA members/Handbook subscribers on request.** *March 2019*

## 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. *March 2019*

**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 EEA[2] 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*

# Part II – Singapore

## Introduction

2.1 Under the legal and regulatory framework governing securities issues in Singapore, an offer or invitation to persons in Singapore for the subscription or purchase of securities is regulated by the Securities and Futures Act (Chapter 289 of Singapore) (the "**SFA**"). The Monetary Authority of Singapore (the "**MAS**") is the regulatory authority charged with the responsibility of administering the SFA. Broadly, the MAS adopts a "disclosure-based approach" for regulated products such as debentures (which includes international bond offerings). *February 2017*

2.2 Under the SFA, the concept of a "public offer" ceased to exist following the enactment of the Securities and Futures (Amendment) Act 2005 (No. 1 of 2005). Accordingly, all offers of securities are prima facie subject to the prospectus requirement (i.e. that which requires the registration of the prospectus with the MAS) unless such an offer is specifically exempted under the SFA. The focus of the restriction, in line with general market practice focuses on two statutory exemptions, namely an offer of securities to (i) institutional investors and/or (ii) accredited investors and certain other persons (the "**Section 275 Persons**") pursuant to Sections 274 and/or 275 of the SFA respectively. There are no restrictions on the number of institutional investors and/or Section 275 Persons that an offer of securities can be made to pursuant to an exemption under Sections 274 and/or 275 of the SFA. *February 2017*

## Standard form of selling restriction

2.3 Standard form of Singapore selling restriction. *March 2019*

Each [Manager]/[Dealer] has acknowledged[, and each further Dealer appointed under the Programme will be required to acknowledge,]* that this [Offering Circular]/[Information Memorandum] has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, each [Manager]/[Dealer] has represented, warranted and agreed[, and each further Dealer appointed under the Programme will be required to represent, warrant and agree,]* that it has not offered or sold any [Securities]** or caused the [Securities] to be made the subject of an invitation for subscription or purchase and will not offer or sell any [Securities] or cause the [Securities] to be made the subject of an invitation for subscription or purchase, and has not circulated or distributed, nor will it circulate or distribute, this [Offering Circular]/[Information Memorandum] or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the [Securities], whether directly or indirectly, to any person in Singapore other than (i) to an institutional investor (as defined in Section 4A of the Securities and Futures Act (Chapter 289) of Singapore, as modified or amended from time to time (the "**SFA**")) pursuant to Section 274 of the SFA, (ii) to a relevant

person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the [Securities] are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

(a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities or securities-based derivatives contracts (each term as defined in Section 2(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the [Securities] pursuant to an offer made under Section 275 of the SFA except:

(1) to an institutional investor or to a relevant person, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;

(2) where no consideration is or will be given for the transfer;

(3) where the transfer is by operation of law;

(4) as specified in Section 276(7) of the SFA; or

(5) as specified in Regulation 37A of the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018.

*Notes:*

* *Include for MTN Programmes.*

** *Insert the nature of the Securities (eg: Notes, Bonds, Capital Securities etc).*

## Variations to the standard form

2.4 It is intended that this form will typically be used for standard offerings of securities pursuant to Sections 274 and/or 275 of the SFA in the international institutional market. There are other exemptions and safe harbours available under the SFA which are not discussed here (for example, via a small offering exemption or a private placement exemption pursuant to Sections 272A or 272B respectively). Accordingly, other types of transactions may require adjustments to the selling restriction language to suit circumstances. *February 2017*

# Appendix A16 - Sub-€100,000 denomination bonds under the EEA Prospectus Directive and retail cascade legends

**The ICMA pro forma retail cascade legends for prospectuses and base prospectuses set out below are being revised in the light of the UK's withdrawal from the European Union and the introduction of the EU MiFID II product governance regime. Draft revised language is available from ICMA staff (legalhelpdesk@icmagroup.org) to ICMA members/ Handbook subscribers on request.** *March 2019*

## Speed Read

1.1 Parties to a primary bond issue may find it helpful to: *September 2015*

(a) generally think of offers of the bonds as being '**PD-exempt**' or '**PD non-exempt**' rather than 'wholesale' or 'retail' – as some low denomination bonds may not be intended for general retail distribution;

(b) consider '**who**' will be authorised by the issuer to offer using its prospectus, '**where**' (i.e. in what countries) and '**when**' (i.e. during what period) - if the issuer prepares a prospectus to enable some 'PD non-exempt' offers;

(c) bear in mind that any offers not covered by the issuer's prospectus will have to be 'PD-exempt' (unless the relevant offeror prepares its own prospectus);

(d) limit passporting to those countries where 'PD non-exempt' distribution is specifically targeted;

(e) notify the market of as much relevant information on the 'who', 'where' and 'when' of the offer at an earlier stage of the book building process, for example by using an appropriate form of screen announcement (see examples in paragraph 3.1 below); and

(f) include an appropriate retail cascade legend in the prospectus or base prospectus (see paragraphs 4.1 – 4.4 below).

However, parties should be mindful of the need to comply with specific national laws and regulation concerning PD offers, e.g. the Austrian "Notification to the issue calendar".

## Background

### Introduction

2.1 Following the implementation of the amended Prospectus Directive ("**PD**"), there has been a discernable trend for debt securities to be issued in Europe in denominations of €100,000 or above. Public offers (as defined in the PD) of bonds with a denomination of €100,000 and above are exempt from the requirement to publish a prospectus pursuant to Art. 3(2) (a) of the PD. *September 2015*

2.2 Other notable exemptions from the prospectus requirement include offers (i) to qualified investors, (ii) to fewer than 150 natural or legal persons per EEA country, and (iii) involving a minimum total consideration of €100,000 per investor. *September 2015*