

THE FINANCIAL SERVICES AND MARKETS ACT 2000

POST N2 SELLING RESTRICTIONS

This Note identifies the new selling restrictions to be used in relation to:

- Medium term note, commercial paper and other programmes (see Annex 1)
- Stand alone debt issues (see Annex 2)
- Equity issues (see Annex 3)

where the programme is established or updated or the issue is made on or after N2 (the date on which the relevant provisions of the Financial Services and Markets Act 2000 (the "**FSMA**") are brought into force). In addition to the selling restrictions, a new issuer covenant in relation to issues of commercial paper is also included.

For stand alone issues which are sufficiently proximate to N2, reference should also be made to the note detailing the transitional provisions for MTN programmes to determine appropriate forms of wording. It is recommended that transitional financial promotion language is used in stand alone issues from the date of this Note.

Apart from technical changes to reflect the replacement of certain provisions of the Financial Services Act 1986 (the "**FSA**") by the relevant provisions of the FSMA, the principal changes are the inclusion of a new selling restriction and issuer covenant relating to commercial paper (designed to ensure that, in relation to debt issues only, there is no breach of section 19 of the FSMA (The general prohibition)) and new provisions relating to financial promotion.

Section 21 of the FSMA (Restrictions on financial promotion) prohibits the communication of invitations or inducements to engage in investment activity by persons who are not authorised. As "communication" is defined to include causing a communication to be made, an issuer (who is not an authorised person) will be concerned to ensure that any communication made by it or which it may be said to have caused to be made (for example in an offering circular) is exempt from this prohibition. An issuer which is an authorised person will also be concerned to ensure that any communication made by it or which it may be said to have caused to be made is exempt from this prohibition as that will ensure that the communication is outside the scope of Financial Promotion Rules applicable to it made under section 145 of the FSMA (Financial promotion rules).

The Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (the "**FP Order**") (as amended by The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2001 (the "**FP Amendment Order**")) sets out a number of situations where a communication which would otherwise be in breach of section 21 will not be. As with the previous regime, these include communications by certain sovereign and quasi-sovereign entities and communications included in listing particulars or prospectuses made under the FSMA or the Public Offers of Securities Regulations 1995. In addition, Article 67 (Promotion required or permitted by market rules) will exempt offering circulars for most listed issues.

Other exceptions which may be relevant are set out in Articles 12 (Communications to overseas recipients), 19 (Investment professionals) and 49 (High net worth companies, unincorporated associations, etc.) of the FP Order. Article 12 exempts communications made to a person who receives the communication outside the United Kingdom. Article 19 exempts communications made to a person who the communicator believes on reasonable grounds to be an investment professional

(as defined in the Article) and Article 49 exempts communications made to a person who the communicator believes on reasonable grounds to be within the scope of Article 49(2), essentially high net worth companies, unincorporated associations, partnerships and trusts and their management. These exemptions (referred to in this Note as the "**non-safe harbour exemptions**") can be relied on cumulatively.

Each of Articles 12, 19 and 49 also contains a safe harbour provision principally for use in situations where the communications are addressed generally, for example by being posted on a website. These exemptions are unlikely to be used much in relation to traditional eurobond issues and MTN programmes but may be more relevant in the context of equity issues where the internet and newspaper and other mass media advertising can be used as marketing tools. An integral part of the safe harbours is the prominent display of a legend on the communication. A suggested form of legend is set out in Annex 4 although it should be noted that there are other requirements that need to be satisfied in order to fall within the safe harbour.

Section 21 does not apply to communications made by authorised persons. However, when they make communications, authorised persons are subject to the Financial Promotion Rules made under section 145 of the FSMA. Because these rules do not apply to communications which would be exempt if the person making them was not authorised, it is possible that investment banks (which are authorised persons) will also wish to rely on the FP Order exemptions in communications made by them to ensure that the Financial Promotion Rules do not apply. However it is also possible that investment banks which are authorised persons will instead rely on the exemptions from the application of the Financial Promotion Rules for communications made to "market counterparties" or "intermediate customers" (as those terms are defined in the Financial Promotion Rules).

No provisions have been included in relation to the exemptions set out in Articles 48 (Certified high net worth individuals) and 50 (Sophisticated investors) of the FP Order as it is not considered likely that they will be relied on in relation to typical euromarket issues since each exemption introduces unwieldy certification requirements.

ANNEX 1

UK SELLING RESTRICTIONS FOR PROGRAMMES

The text below should be included in the Programme Agreement. Appropriate changes will need to be made for the version included in the Offering Circular.

Each Dealer represents, warrants and agrees that:

- (i) in relation to Notes which have a maturity of one year or more and which are to be admitted to the Official List, it has not offered or sold and will not offer or sell any Notes to persons in the United Kingdom prior to admission of such Notes to listing in accordance with Part VI of the Financial Services and Markets Act 2000 (the "FSMA"), except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995 or the FSMA;¹
- (ii) in relation to Notes which have a maturity of one year or more [and which are not be admitted to the Official List]², it has not offered or sold and, prior to the expiry of a period of six months from the Issue Date of such Notes, will not offer or sell any such Notes to persons in the United Kingdom except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995;
- (iii) in relation to any Notes which must be redeemed before the first anniversary of the date of their issue, (a) 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 (b) 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 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;³
- (iv) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any 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]⁴; and

¹ Text only to be included in relation to a programme which is admitted to the Official List.

² Text only to be included in relation to a programme which is admitted to the Official List.

³ Text not appropriate if the issuer is an authorised person permitted to accept deposits or an exempt person under the FSMA.

⁴ If there is no Guarantor and the Issuer is an authorised person, replace "does not" in the penultimate line 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,".

- (v) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to such Notes in, from or otherwise involving the United Kingdom.

In addition to the selling restrictions identified above, a new issuer covenant should be included in the Programme Agreement as follows unless the issuer is an authorised person permitted to accept deposits or an exempt person:

In respect of any Tranche of Notes which must be redeemed before the first anniversary of the date of its issue, the Issuer will issue such Notes only if the following conditions apply (or the Notes can otherwise be issued without contravention of section 19 of the FSMA):

- (a) each relevant Dealer represents, warrants and agrees in the terms set out in [*cross reference the relevant selling restriction*]; and
- (b) the redemption value of each such Note is not less than £100,000 (or an amount of equivalent value denominated wholly or partly in a currency other than sterling), and no part of any Note may be transferred unless the redemption value of that part is not less than £100,000 (or such an equivalent amount).

ANNEX 2

UK SELLING RESTRICTIONS FOR STAND ALONE DEBT ISSUE

The text below should be included in the Subscription Agreement. Appropriate changes will need to be made for the version included in the Offering Circular.

Each Manager represents, warrants and agrees that:

- (i) it has not offered or sold and will not offer or sell any Notes to persons in the United Kingdom prior to admission of the Notes to listing in accordance with Part VI of the Financial Services and Markets Act 2000 (the "FSMA"), except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995 or the FSMA;⁵
- (ii) it has not offered or sold and, prior to the expiry of a period of six months from the Closing Date, will not offer or sell any Notes to persons in the United Kingdom except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995;⁶
- (iii) 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 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 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;⁷
- (iv) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any 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]⁸; and

⁵ Text only to be included in relation to an issue of Notes with a maturity of one year or more and which are to be admitted to the Official List.

⁶ Text only to be included in relation to an issue of Notes with a maturity of one year or more and which are not to be admitted to the Official List.

⁷ This text should only be included where (a) the Notes must be redeemed before their first anniversary, (b) the issue of the Notes constitutes the acceptance of a deposit "in the United Kingdom" for the purposes of section 19 of the FSMA (for example if the issuer has its head office in, or conducts its treasury activities out of, the UK or the issue of the Notes is denominated in sterling or the proceeds are otherwise to be received by the issuer in the United Kingdom) and (c) the issuer is not an authorised person permitted to accept deposits or an exempt person under the FSMA. If the text is to be included, the Notes must have a minimum denomination of £100,000 (or equivalent).

⁸ If there is no Guarantor and the Issuer is an authorised person, replace "does not" in the penultimate line 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,".

- (v) 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.

ANNEX 3

UK SELLING RESTRICTIONS FOR EQUITY ISSUES

Equity offerings are typically in one of three forms: an issue of shares only, an issue of GDRs only or an issue of both shares and GDRs. The selling restrictions set out below assume an issue of both shares and GDRs where the shares are not to be admitted to the Official List but the GDRs are to be as this gives the full range of possible wording. Appropriate changes should be made in other situations.

The text below should be included in the Subscription Agreement. Appropriate changes will need to be made for the version included in the Offering Circular.

Each Manager represents, warrants and agrees that:

- (i) it has not offered or sold and will not offer or sell any GDRs to persons in the United Kingdom prior to admission of the GDRs to listing in accordance with Part VI of the Financial Services and Markets Act 2000 (the "FSMA"), except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995 or the FSMA;
- (ii) it has not offered or sold and, prior to the expiry of a period of six months from the Closing Date, will not offer or sell any Shares to persons in the United Kingdom except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995;
- (iii) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any 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 Shares or GDRs in circumstances in which section 21(1) of the FSMA [does not] [would not, if the Issuer were not an authorised person,]⁹ apply to the Issuer; and
- (iii) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Shares or GDRs in, from or otherwise involving the United Kingdom.

⁹ Use the first alternative if the Issuer is not an authorised person and the second alternative if it is an authorised person.

ANNEX 4**LEGENDS**

As indicated above, where one or more of the safe harbours set out in Articles 12, 19 and 49 of the FP Order are to be relied on, the following form of legend is suggested for use. Depending on the circumstances, it may be appropriate to expand the reference to Article 49(2) persons to include the full text of paragraphs (a) to (d). This legend is required to be presented in the manner best calculated to bring the matter in question to the attention of the recipient and to allow him to consider it.

LEGEND

"This communication is directed only at persons who (i) are outside the United Kingdom or (ii) have professional experience in matters relating to investments or (iii) are persons falling within Article 49(2)(a) to (d) ("high net worth companies, unincorporated associations etc") of The Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (all such persons together being referred to as "relevant persons"). This communication must not be acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this communication relates is available only to relevant persons and will be engaged in only with relevant persons."