

## EEA AND UK SELLING RESTRICTIONS

This Note identifies:

- a new form of EEA-wide selling restriction; and
- changes to the standard UK selling restriction,

to be used in relation to MTN programmes and stand alone debt issues where the programme is established or updated or the issue is made on or after the date on which the UK implements the Prospectus Directive (the **Implementation Date**, which is expected to be 1st July, 2005). Transitional selling restrictions are also included for programmes which are updated or established before the Implementation Date. In addition to the selling restrictions, a form of legend for inclusion in a summary and suggested disclosure relating to the conditions for determining the price and amount of notes to be issued under an MTN programme are also set out.

For stand alone issues which are sufficiently proximate to the Implementation Date, reference should also be made to the transitional provisions for MTN programmes to determine appropriate forms of wording.

The new form of EEA selling restriction reflects the requirements of the Prospectus Directive (*as further described below*) and is written to apply to each Member State from the date on which it implements the Prospectus Directive. Once the Prospectus Directive has been implemented in all Member States, the introductory language can be simplified. So far as the UK is concerned, once the Prospectus Directive is implemented, the Public Offers of Securities Regulations and the unlisted securities regime in Part VI of the Financial Services and Markets Act will be repealed and therefore the selling restrictions reflecting these provisions can be deleted. It may be the case that selling restrictions in other Member States will also change once the Prospectus Directive is implemented in those Member States.

Article 3 of the Prospectus Directive prohibits offers of securities to the public in any Member State which has implemented the Directive unless a prospectus has been published in, or published elsewhere and notified to, that Member State. For convenience the definition of the term "offer to the public" in the Prospectus Directive has been specifically replicated in the form of selling restriction.

Certain offers are exempted from the prospectus publication requirement including, in particular, offers only to qualified investors. This exemption is reflected in paragraphs (b) and (c) of the suggested form of EEA selling restriction for MTN programmes.

Paragraph (a) of the suggested form of EEA selling restriction for MTN programmes is expressed to apply only for a period of 12 months. This reflects the validity period of a base prospectus under Article 9 of the Prospectus Directive. Issuers should be aware of the requirements in Article 16 of the Prospectus Directive to update any prospectus by publication of a supplement where a significant new factor has occurred. Most programmes already contain an update covenant in this respect. The new form of EEA selling restriction should not be read as implying an additional update covenant by the issuer.

Paragraph (d) of the selling restrictions reflects the other exemptions in Article 3(2) of the Prospectus Directive (including the exemption where the offer is addressed to less than 100 persons per EEA Member State, other than qualified investors) but is also wide enough to catch variations introduced by national implementing legislation.

The new form of EEA selling restriction does not apply where the denomination of the securities being offered can never be less than €50,000 (or equivalent) because, under Article 3(2) of the Prospectus Directive, such offers are exempt from the obligation to publish a prospectus. In addition, it does not apply to EEA sovereigns and supranationals as such issuers are outside the scope of the Prospectus Directive.

The form of legend for the summary reflects the requirements of Article 5(2) of the Prospectus Directive.

International Primary Market Association  
26th May 2005

**PROSPECTUS DIRECTIVE COMPLIANT  
TRANSITIONAL SELLING RESTRICTIONS<sup>1</sup>  
(Programme)**

**European Economic Area<sup>2</sup>**

In relation to each Member State of the European Economic Area<sup>3</sup> which has implemented the Prospectus Directive (each, a **Relevant Member State**), each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that with effect from and including the date on which the Prospectus Directive is implemented in that Member State (the **Relevant Implementation Date**) it has not made and will not make an offer of Notes to the public in that Relevant Member State, except that it may, with effect from and including the Relevant Implementation Date, make an offer of Notes to the public in that Relevant Member State<sup>4</sup>:

- (a) in (or in Germany, where the offer starts within) the period beginning on the date of publication of a prospectus in relation to those Notes which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive and ending on the date which is 12 months after the date of such publication;
- (b) at any time to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- (c) at any time to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts; or
- (d) at any time in any other circumstances which do not require the publication by the Issuer of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer of Notes to the public” in relation to any Notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes to be offered so as to enable an investor to decide to purchase or subscribe the Notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression **Prospectus Directive** means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

**United Kingdom**

Each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that:

- (a) [in relation to Notes which have a maturity of one year or more and which are to be admitted to the Official List, during the period up to but excluding the date on which [Directive 2003/71/EC/the Prospectus Directive] is implemented in the United Kingdom (the

---

<sup>1</sup> To be included in all programmes established or updated prior to implementation in the United Kingdom.

<sup>2</sup> This selling restriction should be deleted where the Programme does not permit Notes with a denomination of less than €50,000 (or equivalent) to be issued.

<sup>3</sup> The EU plus Iceland, Norway and Liechtenstein.

<sup>4</sup> Once the Prospectus Directive has been implemented in all EEA Member States this lead in language can be simplified.

**Implementation Date**), 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 (as amended) or the FSMA;]<sup>5</sup>

- (b) in relation to Notes which have a maturity of one year or more [and which are not to be admitted to the Official List]<sup>6</sup>, during the period up to but excluding the Implementation Date, it has not offered or sold and 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 (as amended);
- (c) in relation to any Notes which have a maturity of less than one year, (i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (ii) it has not offered or sold and will not offer or sell any Notes other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the Notes would otherwise constitute a contravention of Section 19 of the FSMA by the Issuer;<sup>7</sup>
- (d) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of any Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer [or the Guarantor];<sup>8</sup> and
- (e) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to any Notes in, from or otherwise involving the United Kingdom.

---

<sup>5</sup> Only applicable to a London listing.

<sup>6</sup> Only applicable if programme permits London listing.

<sup>7</sup> This selling restriction is included to reflect the fact that Section 19 of the FSMA effectively prohibits any person other than an authorised person permitted to accept deposits under the FSMA from taking deposits in the UK by way of business. Under the Regulated Activities Order, most securities issues do not constitute deposits. However, notes with a maturity of less than 1 year, a denomination of under £100,000 and issued to non-professionals are deposits. This provision should be deleted if the Issuer is an authorised person permitted to accept deposits or an exempt person under the FSMA.

<sup>8</sup> If there is only an Issuer which 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,".

**PROSPECTUS DIRECTIVE COMPLIANT  
SELLING RESTRICTIONS<sup>9</sup>  
(Programme)**

**European Economic Area<sup>10</sup>**

In relation to each Member State of the European Economic Area<sup>11</sup> which has implemented the Prospectus Directive (each, a **Relevant Member State**), each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the **Relevant Implementation Date**) it has not made and will not make an offer of Notes to the public in that Relevant Member State except that it may, with effect from and including the Relevant Implementation Date, make an offer of Notes to the public in that Relevant Member State<sup>12</sup>:

- (a) in (or in Germany, where the offer starts within) the period beginning on the date of publication of a prospectus in relation to those Notes which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive and ending on the date which is 12 months after the date of such publication;
- (b) at any time to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- (c) at any time to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts; or
- (d) at any time in any other circumstances which do not require the publication by the Issuer of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer of Notes to the public” in relation to any Notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes to be offered so as to enable an investor to decide to purchase or subscribe the Notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression **Prospectus Directive** means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

**United Kingdom**

Each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that:

- (a) in relation to any Notes which have a maturity of less than one year, (i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal

---

<sup>9</sup> These selling restrictions are for use in Programmes established or updated on and after implementation in the United Kingdom.

<sup>10</sup> This selling restriction should be deleted where the Programme does not permit Notes with a denomination of less than €50,000 (or equivalent) to be issued.

<sup>11</sup> The EU plus Iceland, Norway and Liechtenstein.

<sup>12</sup> Once the Prospectus Directive has been implemented in all EEA Member States this lead in language can be simplified.

or agent) for the purposes of its business and (ii) it has not offered or sold and will not offer or sell any Notes other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the Notes would otherwise constitute a contravention of Section 19 of the FSMA by the Issuer;<sup>13</sup>

(b) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of any Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer [or the Guarantor];<sup>14</sup> and

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

---

<sup>13</sup> This selling restriction is included to reflect the fact that Section 19 of the FSMA effectively prohibits any person other than an authorised person permitted to accept deposits under the FSMA from taking deposits in the UK by way of business. Under the Regulated Activities Order, most securities issues do not constitute deposits. However, notes with a maturity of less than 1 year, a denomination of under £100,000 and issued to non-professionals are deposits. This provision should be deleted if the Issuer is an authorised person permitted to accept deposits or an exempt person under the FSMA.

<sup>14</sup> If there is only an Issuer which 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,".

**PROSPECTUS DIRECTIVE COMPLIANT  
SELLING RESTRICTIONS  
(Stand alone)**

**European Economic Area<sup>15</sup>**

In relation to each Member State of the European Economic Area<sup>16</sup> which has implemented the Prospectus Directive (each, a **Relevant Member State**), each Manager has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the **Relevant Implementation Date**) it has not made and will not make an offer of Notes to the public in that Relevant Member State prior to the publication of a prospectus in relation to the Notes which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date, make an offer of Notes to the public in that Relevant Member State at any time<sup>17</sup>:

- (a) to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- (b) to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts; or
- (c) in any other circumstances which do not require the publication by the Issuer of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer of Notes to the public” in relation to any Notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Notes to be offered so as to enable an investor to decide to purchase or subscribe the Notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression **Prospectus Directive** means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

**United Kingdom**

Each Manager has represented and agreed that:

- (a) (i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (ii) it has not offered or sold and will not offer or sell the Notes other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the Notes would otherwise constitute a contravention of Section 19 of the FSMA by the Issuer;<sup>18</sup>

<sup>15</sup> This selling restriction should be deleted where the denominations are €50,000 (or equivalent) or above.

<sup>16</sup> The EU plus Iceland, Norway and Liechtenstein.

<sup>17</sup> Once the Prospectus Directive has been implemented in all EEA Member States this lead in language can be simplified.

<sup>18</sup> This selling restriction is included to reflect the fact that Section 19 of the FSMA effectively prohibits any person other than an authorised person permitted to accept deposits under the FSMA from taking deposits in the UK by way of business. Under the Regulated Activities Order, most securities issues do not constitute deposits. However, notes with a maturity of less than 1 year,

- (b) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer [or the Guarantor];<sup>19</sup> and
- (c) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Notes in, from or otherwise involving the United Kingdom.

---

a denomination of under £100,000 and issued to non-professionals are deposits. This provision should be deleted if (i) the Issuer is an authorised person permitted to accept deposits or an exempt person under the FSMA or (ii) the Notes have a maturity of one year or more or (iii) the Notes have a denomination of £100,000 or more.

<sup>19</sup> If there is only an Issuer which 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,".



## **LEGEND FOR SUMMARY**

**(PD Article 5.2)**

*[To be included in the Base Prospectus/Prospectus]*

This summary must be read as an introduction to this Prospectus<sup>20</sup> and any decision to invest in the [Notes/Bonds] should be based on a consideration of the Prospectus as a whole, including the documents incorporated by reference. Following the implementation of the relevant provisions of the Prospectus Directive (Directive 2003/71/EC) in each Member State of the European Economic Area no civil liability will attach to the Responsible Persons<sup>21</sup> in any such Member State solely on the basis of this summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with the other parts of this Prospectus. Where a claim relating to the information contained in this Prospectus is brought before a court in a Member State of the European Economic Area, the plaintiff may, under the national legislation of the Member State where the claim is brought, be required to bear the costs of translating the Prospectus before the legal proceedings are initiated.

## **CONDITIONS FOR DETERMINING PRICE**

**(PD Article 8)**

*[To be included in the Base Prospectus]*

The price and amount of Notes to be issued under the Programme will be determined by the Issuer and the relevant Dealer at the time of issue in accordance with prevailing market conditions.

---

<sup>20</sup>

This definition will need to catch all parts of the prospectus if it is prepared in parts.

<sup>21</sup>

This will require a definition of "Responsible Persons" to be inserted in the appropriate place in the responsibility statement.