

SELLING RESTRICTIONS FOR EQUITY (EEA AND UK)

Introduction

The wording sets out the selling restrictions for equity transactions for use following a no-deal Brexit or a Brexit with a deal/transitional period, as applicable.

This wording covers those selling restrictions that are most frequently used in practice. These comprise an EEA public offer selling restriction covering public offers in the “EEA” (on “no deal” this means the EU 27 plus Iceland, Norway and Liechtenstein) and a new UK public offer restriction.

If there is a deal, it is anticipated that no further changes will be required to the language to reflect the full implementation of the EU Prospectus Regulation EU 1129/2017 (PD III). If there is no deal, the UK’s policy is to implement PD III. However, it is unclear whether there will be a timing mismatch between the EU27 and the UK, regarding implementation. The impact of these issues will be reviewed in July 2019.

1. SELLING RESTRICTION WORDING TO REFLECT A NO DEAL BREXIT

The wording comprises an EEA public offer equity selling restriction, a UK public offer equity selling restriction and a selling restriction addressing additional United Kingdom securities laws, as follows.

EEA public offer selling restriction

In relation to each Member State of the European Economic Area, each [Manager] severally and not jointly or jointly and severally, represents, warrants and agrees that it has not made and will not make an offer of shares which are the subject of the [offering/placement] contemplated by [the Prospectus][[the]/[this] Underwriting Agreement] (the “Shares”) to the public in that Member State [other than the offers contemplated in the Prospectus in [*insert name(s) of Member State(s) where prospectus will be approved or passported for the purposes of a non-exempt offer*]] once the Prospectus has been approved by the competent authority in [*name of Member State where prospectus will be approved*] and published [and notified to the relevant competent authorit(y)/(ies)] in accordance with the Prospectus Directive, provided that the Issuer has consented in writing to the use of the Prospectus for any such offers,] except that it may make an offer to the public in that Member State of any Shares at any time under the following exemptions under the Prospectus Directive:

- (a) to any legal entity which is a qualified investor as defined under the Prospectus Directive;
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined under the Prospectus Directive), subject to obtaining the prior consent of [the Global Co-ordinator] for any such offer; or
- (c) in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of Shares shall require the Issuer or any Manager to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer to the public” in relation to any Shares in any Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any Shares to be offered so as to enable an investor to

decide to purchase or subscribe for any Shares, as the same may be varied in that Member State and the expression “Prospectus Directive” means Directive 2003/71/EC (as amended or superseded including by Directive 2010/73/EU or by Regulation (EU) 2017/1129), and includes any relevant implementing measure in the Member State.

United Kingdom public offer selling restriction

Each [Manager] severally and not jointly or jointly and severally, represents, warrants and agrees that it has not made and will not make an offer of shares which are the subject of the [offering/placement] contemplated by [the Prospectus][[the]/[this] Underwriting Agreement] (the “Shares”) to the public in the United Kingdom other than the offers contemplated in the Prospectus once the Prospectus has [either (i) been approved by the Financial Conduct Authority or (ii) is to be treated as if it had been approved by the Financial Conduct Authority in accordance with the transitional provisions in Article 73 of the Official Listing of Securities, Prospectus and Transparency Amendment etc)(EU Exit) Regulations 2019]¹ and published, provided that the Issuer has consented in writing to the use of the Prospectus for any such offers, except that it may make an offer to the public in the United Kingdom of any Shares at any time under the following exemptions:

- (a) to any legal entity which is a “qualified investor” as defined under section 86(7) of the Financial Services and Markets Act 2000 (FSMA);
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined under the FSMA), subject to obtaining the prior consent of [the Global Co-ordinator] for any such offer; or
- (c) in any other circumstances falling within section 86 of the FSMA,

provided that no such offer of Shares shall require the Issuer or any Manager to publish a prospectus pursuant to section 85 of the FSMA or supplement a prospectus pursuant to section 87G of the FSMA.

For the purposes of this provision, the expression an “offer to the public” in relation to any Shares in the United Kingdom means the communication in any form and by any means of sufficient information on the terms of the offer and the Shares to be offered so as to enable an investor to decide to purchase or subscribe for any Shares.

Selling restrictions addressing additional United Kingdom securities laws

Each Manager severally represents, warrants and agrees that:

- (a) 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 FSMA) in connection with the issue or sale of the Shares in circumstances in which Section 21(1) of FSMA [does not] [would not, if the issuer were not an authorised person,] apply to the issuer; and

¹ This reflects the FCA’s grandfathering of prospectuses approved by an EU 27 National Competent Authority for the validity of the prospectus (12 months from the date of approval).

(b) 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 in, from or otherwise involving the United Kingdom.

2. SELLING RESTRICTION WORDING TO REFLECT A DEAL AND TRANSITIONAL PERIOD

The wording comprises an EEA and United Kingdom public offer equity selling restriction and a selling restriction addressing additional United Kingdom securities laws, as follows.

EEA and United Kingdom public offer selling restriction

In relation to each Member State of the European Economic Area and the United Kingdom (each a “Relevant State”), each [Manager] severally and not jointly or jointly and severally, represents, warrants and agrees that it has not made and will not make an offer of shares which are the subject of the [offering/placement] contemplated by [the Prospectus][[the]/[this] Underwriting Agreement] (the “Shares”) to the public in that Relevant State [other than the offers contemplated in the Prospectus in *[insert name(s) of State(s) where prospectus will be approved or passported [within the EEA]² for the purposes of a non-exempt offer*] once the Prospectus has been approved by the competent authority in *[name of State where prospectus will be approved]* and published [and notified to the relevant competent authorit(y)/(ies)] in accordance with the Prospectus Directive, provided that the Issuer has consented in writing to the use of the Prospectus for any such offers,] except that it may make an offer to the public in that Relevant State of any Shares at any time under the following exemptions under the Prospectus Directive:

- (d) to any legal entity which is a qualified investor as defined under the Prospectus Directive;
- (e) to fewer than 150 natural or legal persons (other than qualified investors as defined under the Prospectus Directive), subject to obtaining the prior consent of [the Global Co-ordinator] for any such offer; or
- (f) in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of Shares shall require the Issuer or any Manager to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer to the public” in relation to any Shares in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and any Shares to be offered so as to enable an investor to decide to purchase or subscribe for any Shares, as the same may be varied in that State and the expression “Prospectus Directive” means Directive 2003/71/EC (as amended, or superseded including by Directive 2010/73/EU or by Regulation (EU) 2017/1129), and includes any relevant implementing measure in the Relevant State.

Selling restrictions addressing additional United Kingdom securities laws

Each Manager severally represents, warrants and agrees that:

² At the time of drafting, it is unclear what form any deal might yet take. It is possible that the concept of passporting (with the UK treated as if it were a member of the EEA) may continue in that event.

(a) 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 FSMA) in connection with the issue or sale of the Shares in circumstances in which Section 21(1) of FSMA [does not] [would not, if the issuer were not an authorised person,] apply to the issuer; and

(b) 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 in, from or otherwise involving the United Kingdom.

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