6 June 2023

AFME Working Group on EU MiFID II Product Governance Regime: Equity Capital Markets transactions protocol for Ordinary Shares

Please note that this memorandum has been prepared to assist with the Firm's principal EU product governance obligations and is designed to be used periodically by a relevant committee comprising ECM and Sales & Trading business/legal/compliance teams and commitment committee personnel. It is anticipated that certain other obligations contemplated by the EU product governance requirements (such as staff training and management oversight) will be covered where necessary, by existing compliance or other Firm processes.

The memorandum covers ECM transactions in ordinary shares which are or will be admitted to trading on a regulated market, and takes as its starting point that the "base case" Target Market for such securities is identified as retail investors, professional clients[1] and eligible counterparties. For depositary receipts over ordinary shares, substantively the same analysis and conclusions are applied mutatis mutandis *with references to ordinary shares to be construed as references to the depositary receipts over ordinary shares (or other substantially similar depositary receipts), with appropriate amendment, although firms may wish to consider on a periodic basis whether changes to the regulation of depositary receipts or practical experience on listings of depositary receipts would suggest that this treatment is no longer suitable . For other products, such as structured equity products, or equity-linked debt securities, and for other (non-regulated) markets, the memorandum may need to be amended appropriately.*

*This memorandum covers the principal obligations under the MiFID II product governance regime (including target market identification obligations) under MiFID II Articles 16 and 24 and Delegated Directive 2031, as supplemented by ESMA Guidelines [Final Report of 2 June 2017 ESMA 35-43-620, as finalised on 5 February 2018 ESMA35-43-620, and as amended in the Final Report dated 27 March 2023 ESMA35-43-3448] (the "**ESMA Guidelines**") It addresses both "documented" offerings (mainly offerings with an approved prospectus) and "undocumented" offerings where the Firm is acting as a Manufacturer and/or Distributor.*

A draft checklist, which Firms may wish to use on a transaction-by-transaction basis (for example as part of an internal committee/approach process), has been provided at Appendix 3.

Note that a separate AFME ECM UK MiFID II Product Governance Protocol exists to assist firms with the principal UK product governance obligations. However, the AFME Working Group expects that compliance with this protocol should also meet the UK product governance requirements, although not all of the recent changes to the EU product governance requirements are reflected in the current UK product governance regime.

Disclaimer

The AFME EU MiFID II Product Governance Regime – Equity Capital Markets transaction protocol for Ordinary Shares (the "Memorandum") is intended for general information only, and is not intended to be and should not be relied upon as being legal, financial, investment, tax, regulatory, business or other professional advice. AFME does not represent or warrant that it is accurate, suitable or complete and none of AFME or its respective employees or consultants shall have any liability arising from, or relating to, the use of this Memorandum or its contents.

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[1] References in this document to "professional clients" include elective professional clients and per se professional clients.

1 Target Market Assessment for ordinary shares traded on a regulated market

	Question/Decision Step	
A.	What will be the Firm's role on ECM transactions in ordinary shares traded on a regulated market?[2] Is it such as to make the Firm a Manufacturer and/or a Distributor?	The Firm notes that it may act as a Manufacturer and/or Distributor on relevant transactions.
B.	If the Firm is a Manufacturer or a Distributor, what is its primary product governance obligation?	• *Manufacturer* – identify the Target Market on a theoretical basis, determining the product's compatibility with that Target Market, without specific knowledge of individual clients but with a general view of how the specificities of the product would be compatible for certain types of investors. • *Distributor* – use the Manufacturer's more general Target Market assessment together with existing information on its clients to identify its own Target Market for the product; that is, the group of clients to whom they are satisfied that the product may appropriately be offered through the provision of their services. *[Note that, if on a relevant transaction the Manufacturer is not a MiFID firm, the Distributor needs to take all reasonable steps to identify the appropriate Target Market, allowing for the fact that it is not a Manufacturer and for the approach to be proportionate and reasonable in all the circumstances. Where this is the case and no reliable information is publicly available, also to enter into a written agreement with the non-MiFID Manufacturer.]*
C.	What is the "base case" Target Market for transactions in ordinary shares on a regulated market?	The "base case" is that ordinary shares are a mainstream investment not a "manufactured" product, and, as such, as outlined in paragraph 2.7(5) of the ESMA Final Report (2014/1569), should be considered compatible in most cases with the retail market in addition to sales to investors who meet the criteria of professional clients and eligible counterparties (subject to any "negative" Target Market specified). The Firm notes Case Study 4: Target Market assessment of a share listed on a

[2] Note: References to "regulated market" in this Memorandum are to regulated markets within the European Union. Firms may also wish to apply substantively the same analysis and conclusions to regulated markets outside the European Union or to non-regulated markets such as AIM, where Firms are of the opinion that the principles in this Memorandum can be sufficiently applied in the same manner on a proportional basis.

	Question/Decision Step	
		regulated market in the ESMA Guidelines, which refers to a Target Market of retail investors and investors who meet the criteria of professional clients and eligible counterparties.
D.	What is the theoretical "negative" Target Market for transactions in ordinary shares on a regulated market?	The Case Study referred to in C above notes a theoretical "negative" Target Market of investors who: (a) are looking for full capital protection or full repayment of the amount invested; (b) are fully risk averse/have no risk tolerance; and/or (c) need a fully guaranteed income or fully predictable return profile. The Firm notes this illustration. The Firm believes that the features of ordinary shares, and the fact that they do not meet the needs of investors of this type, are generally well understood, including by retail investors, who have access (to the extent they require or wish) to IFAs and other independent advisers.
E.	How does the "base case" Target Market and the theoretical "negative" Target Market apply to relevant transactions by the Firm?	In considering the "base case" Target Market and the theoretical "negative" Target Market, the Firm has had regard to the application of the five criteria set out in the ESMA Guidelines, namely: (i) The type of clients to whom the product is targeted. (ii) Knowledge and experience. (iii) Financial situation with a focus on the ability to bear losses. (iv) Risk tolerance and the compatibility of the risk/reward profile of the product with the Target Market. (v) Clients' objectives and needs. The Firm notes that its application of these criteria has been assessed, taking into account the allowance made by the regime for *proportionality*. Some guidance on the approach to be taken to *proportionality*, including a summary of the framework of investor protections which underpin the trading of ordinary shares on a regulated market, is set out in Appendix 2. A schedule recording how the ESMA criteria have been satisfied is set out in Appendix 1.
F.	Distribution strategy	The Firm notes that, as a base case, ordinary shares are deemed eligible for all distribution channels, as specified in the Case Study referred to at C above.

	Question/Decision Step	
G.	Conclusion on Target Market	In the context of its product governance obligations, the Firm has considered the appropriate Target Market for ordinary shares to be traded on a regulated market. In its assessment, ordinary shares are compatible with a Target Market of retail investors and investors who meet the criteria of professional clients and eligible counterparties. The Firm notes the theoretical "negative" Target Market in the Case Study referred to at C above. The Firm believes that the features of ordinary shares, and the fact that they do not meet the needs of investors of this type, are generally well understood, including by retail investors, who have access (to the extent they require or wish) to IFAs and other independent advisers; and that, as a result, taking into account the allowance made by the regime for *proportionality*, this "negative" target market does not alter the Firm's assessment that ordinary shares are compatible with a Target Market including retail investors. Notwithstanding this assessment, on a specific offering, the Firm may choose to only procure investors who meet the criteria of professional clients and eligible counterparties. It is the Firm's view that the five ESMA criteria referred to in E above, and the primary obligations of the Manufacturer/Distributor, taking into account the proportionality allowed by the MiFID regime, are satisfied to an appropriate degree by (a) the admission of the ordinary shares to a regulated market; and (b) the investor protections and risk mitigants provided by the existing framework of regulation, and that, as such, both: (i) ordinary shares traded on a regulated market (and the features thereof); and (ii) the proposed distribution strategy are compatible and consistent with the Target Market identified by the Firm.

The Firm notes that, at the time of the relevant offer/distribution, as a matter separate to and outside of the scope of its obligations under the EU product governance regime, it may wish to consider whether to apply additional voluntary prudential measures or risk mitigants for purposes other than compliance with the EU product governance regime (which may include its own views of approaches to investor protection). An example process that the Firm may wish to follow at that time is included at Appendix 5 and appropriate language has been included in the transactional checklist at Appendix 3.

Although the consideration of such transactional prudential measures/risk mitigants is not within the scope of the Firm's EU product governance obligations, when the Firm conducts its periodic product governance review as outlined in this document, it may consider whether any insight gained by the Firm during any such process provides it with knowledge relevant to its future product governance framework.

2 Could the instrument represent a threat to the orderly functioning/stability of the market?

	Question/Decision Step	
A.	What will be the Firm's role on transactions in ordinary shares on a regulated market? Is it such as to make the Firm a Manufacturer and/or a Distributor?	The Firm notes that it may act as a Manufacturer and/or Distributor on relevant transactions.
B.	If the Firm is a Manufacturer or a Distributor, what is its primary product governance obligation?	• *Manufacturer* – obligation to consider whether the financial instrument may represent a threat to the orderly functioning/stability of financial markets before deciding to proceed with the launch of the product. • *Distributor* – no equivalent obligation. *Where the Firm solely acts as a Distributor, Paragraphs C and D of this Question 2 do not apply.*
C.	Assessment by the Firm of its obligations, including steps taken by the Firm to comply/additional considerations	The Firm notes that the application of the relevant provisions has been assessed, taking into account the matters that have been considered for compliance with other elements of the MiFID II regime. The Firm notes that it has considered any material changes in the law and regulation relevant to ECM primary market transactions and any other developments (whether arising from changes to market infrastructure or practice or from major events) impacting on ECM primary market transactions since its previous periodic product governance review. In making its assessment, the Firm is cognisant of the need for proportionality in the application of the EU product governance regime and of the protections provided by other elements of the existing regulatory regime. Some guidance on the approach to be taken to *proportionality*, including a summary of the framework of investor protections and risk mitigants provided by applicable regulatory environment and existing processes and policies, is set out in Appendix 2. The Firm notes:

	Question/Decision Step	
		(i) The nature of the financial instrument (i.e. an ordinary share, which is a mainstream investment and not a "manufactured" product) and the description of the financial instrument which is typically included within any prospectus required to be produced on relevant transactions or is well-known if an issuer is already listed. (ii) The insight gained from any due diligence typically completed by the Firm in connection with a transaction relating to ordinary shares. (iii) That large transactions in ordinary shares are typically underwritten by an investment bank or an investment bank syndicate. (iv) The assessment of the nature and appropriateness of relevant transactions in ordinary shares at the Firm's relevant transactional commitment committee meeting.
D.	Conclusion	Noting the steps taken by the Firm to comply with its obligations and the relevant additional considerations noted in paragraphs B and C above, the Firm considers that, in respect of ordinary shares, it does and will comply with its obligations regarding the orderly functioning/stability of the market under the EU product governance regime, taking into account the proportionality allowed by the MiFID regime.

3 Information to be provided to the Manufacturer/Distributor

	Question/Decision Step	
A.	What will be the Firm's role on transactions in ordinary shares? Is it such as to make the Firm a Manufacturer and/or a Distributor?	The Firm notes that it may act as a Manufacturer and/or Distributor on relevant transactions.
B.	If the Firm is a Manufacturer or a Distributor, what is its primary product governance obligation?	• *Manufacturer* – ensure that the provision of information regarding the financial instrument to Distributors includes information regarding appropriate distribution channels/the product approval process/Target Market assessment. • *Distributor* – effective arrangements in place to ensure the Distributor obtains sufficient information regarding the instruments from the MiFID II Manufacturer/takes all reasonable steps to ensure it obtains sufficient information from non-MiFID II Manufacturers (where

	Question/Decision Step	
		information is not publicly available from the Manufacturer itself or its agent) to ensure that the products will be distributed in accordance with the needs, characteristics and objectives of the identified Target Market. *Note: acceptable publicly available information is information which is clear, reliable and produced to meet relevant regulatory requirements.*
C.	Assessment by the Firm of its obligations, including steps taken by the Firm to comply/additional considerations	The Firm notes that the application of the relevant provisions has been assessed, taking into account the matters that have been considered for compliance with other elements of the MiFID II regime. In making its assessment, the Firm is cognisant of the need for proportionality in the application of the EU product governance regime and of the protections provided by other elements of the existing regulatory regime. Some guidance on the approach to be taken to *proportionality*, including a summary of the framework of investor protections and risk mitigants provided by the applicable regulatory environment and existing processes and policies, is set out in Appendix 2. The Firm notes that: **A. Transactions where the Firm is acting as a Manufacturer[3]** *Written agreement among co-Manufacturers* (i) On transactions where the Firm is acting as a Manufacturer, the Manufacturers' responsibilities will be outlined in a written agreement (such as an Underwriting Agreement, Placing Agreement, AAM or, if no agreement is required, in an email agreed among the Manufacturers). Please see Section 7 below for further details and Section 1 of Appendix 4 for sample language. *Information provided to Distributors – for transactions with a prospectus* (ii) If a transaction in ordinary shares requires the production of a prospectus, the Firm notes that this will typically contain information regarding the product governance product approval process, Target Market assessment and eligible distribution channels and that, furthermore, the prospectus will: (a) typically be made available to all additional members of any syndicate appointed in relation to the relevant transaction, Distributors placed to by the Firm

[3] Noting that the Firm may also be acting as a Distributor.

	Question/Decision Step	
		and other distributors (if any) appointed by the issuer of which the Firm is aware at the time of the relevant offering; and (b) be publicly available. See Section 2 of Appendix 4 for sample language. (iii) If intermediaries are appointed in relation to the retail tranche of a large offering, they will typically be asked to enter into a set of terms and conditions regarding their conduct in relation to the offering which, where appropriate, will include language substantially in the form set out at Section 2 of Appendix 4. *Information additionally provided to Distributors – on all transactions (i.e. transactions with and without a prospectus)* (iv) Issuer announcements will typically contain information regarding the product governance product approval process, Target Market assessment and eligible distribution channels and that, furthermore, such announcements will: (a) typically be made available to the entities referred to in (ii) (a) above; and (b) be publicly available. See Section 2 of Appendix 4 for sample language. (v) It would expect the syndicate banks' Bloomberg notice/external use emails produced in relation to the offering (e.g. at launch, pricing, etc.) to contain information regarding the product governance product approval process, Target Market assessment and eligible distribution channels. Such notices are widely available to the investment community. See Section 2 of Appendix 4 for sample language. (vi) If requested, the Firm would expect to share, by email with Distributors, language regarding the Target Market assessment, distribution channels and the product approval process. See Section 2 of Appendix 4 for sample language. **B. Transactions where the Firm is acting as a Distributor (and not also as a Manufacturer)** (i) On transactions where the Firm is acting only as a Distributor, the Firm is cognisant of the obligation to obtain information regarding the instruments from a MiFID II Manufacturer and to take all reasonable steps to obtain information regarding the instruments from a non-MiFID II Manufacturer to ensure that relevant products are distributed in accordance with the needs, characteristics and objectives of the identified Target Market. The Firm notes that this

	Question/Decision Step	
		obligation applies proportionately, depending on the degree to which publicly available information is obtainable and the complexity of the instrument. *Please note that the language included at Appendix 4 is only required and appropriate for transactions on which the Firm is acting as a* ***Manufacturer***[4] *(i.e. typically as global coordinator or bookrunner (as the case may be) for primary issues of shares).* ***It is not required to be included in relevant documentation on undocumented secondary sales by a shareholder, such as a typical block trade****. Please refer to the Firm's policy regarding secondary market trading for rubrics to be included on such transactions, if any are used, or rely on sales and trading's standard terms of business, if appropriate*
D.	Conclusion	Noting the steps taken by the Firm to comply with its obligations and the relevant additional considerations noted in paragraphs B and C above, the Firm considers that, in respect of ordinary shares, it does and will comply with its obligations regarding the provision of information under the EU product governance regime, taking into account the proportionality allowed by the MiFID regime.

4 Management of actual and potential conflicts of interest

	Question/Decision Step	
A.	What will be the Firm's role on transactions in ordinary shares? Is it such as to make the Firm a Manufacturer and/or a Distributor?	The Firm notes that it may act as a Manufacturer and/or Distributor on relevant transactions.

[4] "Manufacturer" will include all entities deemed to be Manufacturers subject to the EU product governance requirements and all other persons collaborating in the manufacture of the instruments in the relevant 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 "*advising the issuer on the launch of the new securities*" (i.e. liaising with the issuer in structuring the launch, book-build and allocation of the new securities). In some cases (for example where the Global Co-ordinators are the entities substantively liaising with the issuer, it may be appropriate for the Global Co-ordinators to be considered the co- Manufacturers. Consider whether the issuer will be a co-Manufacturer (particularly in cases where the issuer is a regulated entity). See Footnote 8 to Appendix 4 for further details.

B.	If the Firm is a Manufacturer or a Distributor, what is its primary product governance obligation?	• *Manufacturer* – (i) establish, implement and maintain procedures and measures to ensure the "manufacture" of the financial instruments complies with the requirements on the proper management of conflicts of interest, including remuneration (including ensuring that the design of the instrument does not adversely affect end clients/lead to market integrity problems by enabling the Firm to mitigate/dispose of its own risks/exposure to underlying

	Question/Decision Step	
		assets); and (ii) analyse potential conflicts of interest each time a financial instrument is manufactured (including whether end clients may be adversely affected if they take an exposure opposite to the Firm's previously held/anticipated exposure). • *Distributor* – maintain procedures and measures to ensure compliance with MiFID II requirements regarding proper management of conflicts of interest.
C.	Assessment by the Firm of its obligations, including steps taken by the Firm to comply/additional considerations	The Firm notes that the application of the relevant provisions has been assessed, taking into account the matters that have been considered for compliance with other elements of the MiFID II regime. The Firm further notes that it has considered material changes (if any) in the law and regulation relevant to ECM transactions since its previous periodic product governance review. In making its assessment, the Firm is cognisant of the need for proportionality in the application of the EU product governance regime and of the protections provided by other elements of the existing regulatory regime. Some guidance on the approach to be taken to *proportionality*, including a summary of the framework of investor protections and risk mitigants provided by applicable regulatory environment and existing processes and policies, is set out in Appendix 2. The Firm notes: (i) The over-arching requirements relating to the management of conflicts of interest in MiFID II and/or under local requirements implementing MiFID II. *(ii)* The Firm's internal policies in relation to the management of actual and potential conflicts of interest and allocations, including in the transactional context. (iii) The organisational requirements required by the EU product governance regime, including (but not limited to) management control of the product governance process and staff training. (iv) That, if the transaction in ordinary shares requires the production of a prospectus and/or an announcement, these may, in appropriate circumstances, contain or reference additional disclosure with respect to potential conflicts of interest.

	Question/Decision Step	
D.	Conclusion	Noting the steps taken by the Firm to comply with its obligations and the relevant additional considerations noted in paragraphs B and C above, the Firm considers that, in respect of ordinary shares, it has complied and will comply with its obligations with respect to the management of actual and potential conflicts of interest under the EU product governance regime, taking into account the proportionality allowed by the MiFID regime.

5 Charging structure for investors

	Question/Decision Step	
A.	What will be the Firm's role on transactions in ordinary shares? Is it such as to make the Firm a Manufacturer and/or a Distributor?	The Firm notes that it may act as a Manufacturer and/or Distributor on relevant transactions.
B.	If the Firm is a Manufacturer or a Distributor, what is its primary product governance obligation?	• *Manufacturer* – consider the charging structure for the proposed financial instrument, including by examining whether: (i) costs and charges are compatible with the needs, objectives and characteristics of the Target Market; (ii) the charges undermine anticipated returns; and (iii) the charging structure is sufficiently transparent. • *Distributor* – no equivalent obligation. *Where the Firm acts solely as a Distributor, Paragraphs C and D of this Question 5 do not apply.*
C.	Assessment by the Firm of its obligations, including steps taken by the Firm to comply/additional considerations	The Firm notes that the application of the relevant provisions has been assessed, taking into account the matters that have been considered for compliance with other elements of the MiFID II regime. The Firm further notes that it has considered material changes (if any) in the law and regulation relevant to ECM primary market transactions since its previous periodic product governance review.

	Question/Decision Step	
		In making its assessment, the Firm is cognisant of the need for proportionality in the application of the EU product governance regime and of the protections provided by other elements of the existing regulatory regime. Some guidance on the approach to be taken to *proportionality*, including a summary of the framework of investor protections and risk mitigants provided by applicable regulatory environment and existing processes and policies, is set out in Appendix 2. The Firm notes that the financial instrument in each case is or will be an ordinary share and, in an ECM transaction, the price at which an investor may acquire such shares will be made available to it in a transparent manner. The Firm further notes that the transfer of such securities may be subject to transfer taxes levied by national or local governments and payable by the investor and believes that the existence of such taxes is well understood and generally known as a matter of law.
D.	Conclusion	Noting the steps taken by the Firm to comply with its obligations and the relevant additional considerations noted in paragraphs B and C above, the Firm considers that, in respect of ordinary shares, it does and will comply with its obligations regarding the charging structure of the proposed financial instruments under the EU product governance regime, taking into account the proportionality allowed by the MiFID regime.

6 Requirement to undertake scenario analysis

	Question/Decision Step	
A.	What will be the Firm's role on transactions in ordinary shares? Is it such as to make the Firm a Manufacturer and/or a Distributor?	The Firm notes that it may act as a Manufacturer and/or Distributor on relevant transactions.
B.	If the Firm is a Manufacturer or a Distributor, what is its primary product governance obligation?	• *Manufacturer* – undertake a scenario analysis of the relevant financial instruments, assessing the risks of poor outcomes for end investor clients posed by the product and in which circumstances these outcomes might occur. • *Distributor* – no equivalent obligation.

	Question/Decision Step	
		Where the Firm acts solely as a Distributor, Paragraphs C and D of this Question 6 do not apply.
C.	Assessment by the Firm of its obligation to conduct a scenario analysis, including steps taken by the Firm to comply/additional considerations	The Firm notes that the application of the relevant provisions has been assessed, taking into account the matters that have been considered for compliance with other elements of the MiFID II regime. The Firm notes that it has considered any material changes in the law and regulation relevant to ECM primary market transactions and any other developments (whether arising from changes to market infrastructure or practice or from major events) impacting on ECM primary market transactions since its previous periodic product governance review. In making its assessment, the Firm is cognisant of the need for proportionality in the application of the EU product governance regime and of the protections provided by other elements of the existing regulatory regime. Some guidance on the approach to be taken to *proportionality*, including a summary of the framework of investor protections and risk mitigants provided by applicable regulatory environment and existing processes and policies, is set out in Appendix 2. The Firm notes: (i) That the relevant financial instrument is an ordinary share which is a mainstream investment and not a "manufactured" product. (ii) The nature of an ordinary share and the sensitivity of an ordinary share's pricing to, amongst other things, market and macro-economic factors, recognising that: (a) the price of an ordinary share may decline and investors could lose all or part of their investment; (b) an ordinary share offers no guaranteed income or capital protection; and (c) an investment in an ordinary share is compatible only with investors who do not need a guaranteed income or capital protection, who (either alone or in conjunction with an appropriate financial or other adviser) are capable of evaluating the merits and risks of such an investment and who have sufficient resources to be able to bear any losses that may result therefrom.

	Question/Decision Step	
		(iii) That institutional investors placed to by the Firm have, and, given the amount of information available through mandatory and market standard disclosures and other generally available information, retail investors can be assumed to have, a sufficient degree of understanding about the risk reward profile associated with an ordinary share referred to in paragraph (ii) above and a sufficient ability to make, or access to IFAs that can make: (i) an appropriate assessment of the risks associated with an investment in ordinary shares, including under negative conditions; and (ii) an appropriate assessment of their objectives and needs with respect to capital growth and potential income returns. (iv) The Firm is cognisant that risks to investment are disclosed as part of the transaction process, noting that: (a) due diligence is typically completed by the Firm in connection with a transaction in ordinary shares including in relation to the business of an issuer; (b) if a transaction in ordinary shares requires the production of a prospectus, this will include risk factors; and (c) an annual report/equivalent produced by an issuer with listed ordinary shares will comply with local requirements including, where relevant, in relation to the inclusion of risk factors; (v) That if a transaction in ordinary shares requires the production of a prospectus or an announcement, these may, if appropriate, contain relevant additional legends. (vi) The ongoing disclosure obligations which apply to an issuer which already has listed securities.
D.	Conclusion	It is the Firm's view that the product governance obligations of the Manufacturer are satisfied to an appropriate degree by the considerations noted in paragraph C above, taking into account the proportionality allowed by the MiFID regime.

7 Documentation of respective responsibilities

	Question/Decision Step	
A.	What will be the Firm's role on transactions in ordinary shares? Is it such as to make the Firm a Manufacturer and/or a Distributor?	The Firm notes that it may act as a Manufacturer and/or Distributor on relevant transactions.
B.	If the Firm is a Manufacturer or a Distributor, what is its primary product governance obligation?	• *Manufacturer* – when collaborating with other firms (including non-EU manufacturers), outline mutual responsibilities in a written agreement. • *Distributor* – no equivalent obligation. *Where the Firm acts solely as a Distributor, Paragraphs B and C of this Question 7 do not apply.*
C.	Assessment by the Firm of its obligations, including steps taken by the Firm to comply/additional considerations	The Firm notes that the application of the relevant provisions has been assessed, taking into account the matters that have been considered for compliance with other elements of the MiFID II regime. In making its assessment, the Firm is cognisant of the need for proportionality in the application of the EU product governance regime and of the protections provided by other elements of the existing regulatory regime. Some guidance on the approach to be taken to *proportionality*, including a summary of the framework of investor protections and risk mitigants provided by the applicable regulatory environment, is set out in Appendix 2. The Firm notes that: *Written agreement among co-Manufacturers*[5] (i) The Firm would expect those members of the syndicate (such as the Joint Bookrunners)

[5] This should include all entities deemed to be Manufacturers in the relevant offering (although it is acknowledged that, particularly when collaborating with firms that are not subject to EU product governance requirements, this may not be possible and, in those circumstances, in line with the principle of proportionality, it is the view of the AFME Working Group that it is acceptable for those Manufacturers who are MiFID firms to fulfil the requirements on manufacturers themselves without the need for Manufacturers to sign an agreement confirming the allocation of responsibilities).

		acting as a "Manufacturer"[6] to either (a) (typically on large documented offerings) be asked to sign an Underwriting Agreement or Placing Agreement and/or an Agreement Among Managers containing language regarding the Firm's acknowledgement of its responsibilities relating to the Target Market assessment, distribution channels and the product approval

[6] This should include all entities deemed to be Manufacturers in the relevant offering (although it is acknowledged that, particularly when collaborating with firms that are not subject to EU product governance requirements, this may not be possible and, in those circumstances, in line with the principle of proportionality, it is the view of the AFME Working Group that it is acceptable for those Manufacturers who are MiFID firms to fulfil the requirements on manufacturers themselves without the need for no Manufacturers to sign an agreement confirming the allocation of responsibilities).

	Question/Decision Step	
		process. Sample language can be found at Section 1 of Appendix 4; or (b) (typically on undocumented offerings of ordinary shares) circulate/receive an email including language regarding the Firm's acknowledgement of its responsibilities relating to the Target Market assessment, distribution channels and the product approval process. See Section 1 of Appendix 4 for sample language. *Information provided to Distributors – for transactions with a prospectus* (ii) If a transaction in ordinary shares requires the production of a prospectus, the Firm notes that this will typically contain information regarding the product governance product approval process, Target Market assessment and eligible distribution channels and that, furthermore, the prospectus will: (a) typically be made available to all co-Manufacturers, additional members of any syndicate appointed in relation to the relevant transaction, Distributors placed to by the Firm and other Distributors (if any) appointed by the issuer of which the Firm is aware at the time of the relevant offering; and (b) be publicly available. See Section 2 of Appendix 4 for sample language. (iii) If intermediaries are appointed in relation to a large offering, they will typically be asked to enter into a set of terms and conditions regarding their conduct in relation to the offering which, where appropriate, will include language substantially in the form set out at Section 2 of Appendix 4. *Information additionally provided to Distributors – on all transactions (i.e. transactions with and without a prospectus)* (iv) Issuer announcements will typically contain information regarding the product governance product approval process, Target Market assessment and eligible distribution channels and that, furthermore, such announcements will: (a) typically be made available to the entities referred to in paragraph (ii) (a) above; and (b) be publicly available. See Section 2 of Appendix 4 for sample language. (v) It would expect the syndicate banks' Bloomberg notice/external use emails produced in relation to the offering (e.g. at launch, pricing, etc.) to contain information regarding the product governance product approval process, Target Market assessment and eligible

	Question/Decision Step	
		distribution channels. Such notices are widely available to the investment community. See Section 2 of Appendix 4 for sample language. (vi) If requested, the Firm would expect to share, by email with Distributors, language regarding the Target Market assessment, distribution channels and the product approval process. See Section 2 of Appendix 4 for sample language. *Please note that the language included at Appendix 4 is only required and appropriate for transactions on which the Firm is acting as a* ***Manufacturer***[7] *(i.e. typically as global coordinator or bookrunner, as the case may be, for primary issues of shares).* ***It is not required to be included in relevant documentation on undocumented secondary sales by a shareholder, such as a typical block trade****. Please refer to the Firm's policy regarding secondary market trading for rubrics to be included on such transactions.*
D.	Conclusion	Noting the steps taken by the Firm to comply with its obligations and the relevant additional considerations noted in paragraphs B and C above, the Firm considers that, in respect of ordinary shares, it does and will comply with its obligations regarding the documentation of respective responsibilities, taking into account the proportionality allowed by the MiFID regime.

8 Review of financial instruments

	Question/Decision Step	
A.	What will be the Firm's role on transactions in ordinary shares? Is it such as to make the Firm a Manufacturer and/or a Distributor?	The Firm notes that it may act as a Manufacturer and/or Distributor on relevant transactions.

[7] "Manufacturer" will include all entities deemed to be Manufacturers subject to the EU product governance requirements and all other persons collaborating in the manufacture of the instruments in the relevant 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 "*advising the issuer on the launch of the new securities*" (i.e. liaising with the issuer in structuring the launch, book-build and allocation of the new securities). In some cases (for example where the Global Co-ordinators are the entities substantively liaising with the issuer, it may be appropriate for the Global Co-ordinators to be considered the co- Manufacturers. Consider whether the issuer will be a co-Manufacturer (particularly in cases where the issuer is a regulated entity). See Footnote 8 to Appendix 4 for further details.

B.	If the Firm is a Manufacturer or a Distributor, what is its primary product governance obligation?	• *Manufacturer* – (i) review the financial instruments it manufactures on a regular basis, taking into account any event that could materially affect the potential risk to the identified Target

	Question/Decision Step	
		Market and considering (amongst other things) if the instrument remains consistent with the needs, characteristics and objectives, including any sustainability related objectives if relevant, of the Target Market (reconsidering the Target Market in appropriate circumstances); and (ii) review the financial instruments prior to any further issue or re-launch, taking appropriate action. • *Distributor* – review the investment products they offer/recommend and services they provide on a regular basis, taking into account any event that could materially affect the potential risk to the identified Target Market, taking appropriate action. A Distributor must provide to the manufacturer information on sales and other relevant information that may result from the Distributor's review and that may be relevant to the Manufacturer's own review.

C.	Assessment by the Firm of its obligations, including steps taken by the Firm to comply/additional considerations	The Firm notes that the application of the relevant provisions has been assessed, taking into account the matters that have been considered for compliance with other elements of the MiFID II regime. The Firm further notes that, as a matter separate to and outside the scope of the Firm's product governance obligations, it may consider voluntary prudential measures (such as those set out in Appendix 5) on appropriate transactions for the purposes of investor protection. Although the consideration of such transactional prudential measures/risk mitigants is not within the scope of the Firm's product governance obligations, when the Firm conducts its periodic product governance review as outlined in this document, it may consider whether any insight gained by the Firm during any such process provides it with knowledge relevant to its future product governance framework. The Firm notes that it has considered any material changes in the law and regulation relevant to ECM transactions and any other developments (whether arising from changes to market infrastructure or practice or from major events) impacting on ECM transactions since its previous periodic product governance review. In making its assessment, the Firm is cognisant of the need for proportionality in the application of the EU product governance regime and of the protections provided by other elements of the existing regulatory regime. Some guidance on the approach to be taken to *proportionality*, including a summary of the framework of investor protections and risk mitigants provided by applicable regulatory environment, is set out in Appendix 2.[8] The Firm notes:

[8] In addition, ESMA's 2023 final report on Guidelines on MiFID II product governance requirements acknowledges that Manufacturers that advised an issuer on launch of a product "can apply the review obligation for that product in a proportionate manner, irrespective of whether it concerns a simpler or more complex product" (see para 18 of Annex IV and #68 of the ESMA Guidelines). Although ESMA does not go as far as saying that the review obligations do not apply at all (as these are set out in the Level 2 legislative text), ESMA has suggested that the Commission should review relevant Level 2 text to decide whether the review requirement should be "softened" in these cases.

	Question/Decision Step	
		(i) The nature of the financial instrument has been considered. The Firm notes that the relevant financial instrument is an ordinary share, which is a mainstream investment and not a "manufactured" product. (ii) The Firm has considered the Target Market and theoretical "negative" Target Market for ordinary shares traded on a regulated market. (iii) That if a transaction in ordinary shares requires the production of a prospectus and/or (in the case of a primary offering of new shares) an announcement, these will, in appropriate circumstances, include a description of the ordinary shares the subject of the relevant transaction. (iv) The eligibility criteria for listing and admission to trading and the existing framework of investor protection and risk mitigation (see Annex 2 for further details). (v) The insight gained from typical risk factors included within prospectuses produced in relation to a primary documented offering of ordinary shares. (vi) The insight gained from due diligence typically completed on transactions involving an ordinary share (including in relation to risks to investment). (vii) That it has taken and will continue to take into account feedback sought or received from investors in relation to ordinary shares as a product.
D.	Conclusion	It is the Firm's view that the EU product governance obligations of the Manufacturer/Distributor are satisfied to an appropriate degree by the considerations noted in paragraph C above, taking into account the proportionality allowed by the MiFID regime.

Appendix 1
Base Case Compliance with ESMA Criteria

	ESMA Criteria	Response/Approach to Satisfaction of Criteria
1	The type of clients to whom the product is targeted: The Firm should specify to which type of client the product is targeted. This specification should be made according to the MiFID II client categorisation of "retail client", "professional client" and/or "eligible counterparty". To avoid possible misuse of the exemption provided in Article 16a MiFID II, the decision to market or distribute a product exclusively to eligible counterparties should clearly be made ex ante (either when performing the initial target market assessment or when performing periodic reviews), based on the Firm's internal processes.	Whilst the Firm notes the base case Target Market of retail investors, professional clients, elective professional clients and eligible counterparties, on a specific transaction the Firm may choose to only procure investors who meet the criteria of professional clients and eligible counterparties. The Firm acknowledges that it is in the nature of a regulated market that the relevant financial instruments will likely end up in the hands of retail investors (referred to in this Appendix as "end investors") and the Firm will not be able as a matter of practice to prevent this happening. This may occur in a number of ways, including: (i) through on-sales by the investors who are targeted by the Firm as part of its distribution strategy and through the subsequent chain of distribution and ordinary course market trading thereafter; (ii) through an offering (or a separate tranche of the offering) to retail investors, or to intermediary financial institutions on behalf of retail investors, that may subsequently or concurrently be made by the Firm's issuer/seller client or by other financial institutions associated with the offering; (iii) through a "friends & family" or similar direct subscription facility implemented by the issuer/seller; and/or (iv) as part of employee incentive arrangements. The Firm acknowledges that investors falling outside of the Firm's identified distribution strategy may also acquire financial instruments that are fungible with or equivalent to those manufactured or distributed by the Firm (for example where the issuer already has existing listed/traded financial instruments of the relevant type).

	ESMA Criteria	Response/Approach to Satisfaction of Criteria
		The Firm notes the protections provided by law and regulation to protect retail investors and the ability of retail investors to access (to the extent they require or wish) IFAs and other independent advisers. The Firm notes the theoretical "negative" Target Market of investors who: (a) are looking for full capital protection or full repayment of the amount invested; (b) are fully risk averse/have no risk tolerance; (c) need a fully guaranteed income or fully predictable return profile. The Firm believes that the features of ordinary shares, and the fact that they do not meet the needs of investors of this type, are generally well understood, including by retail investors, who have the ability to access (to the extent they require or wish) IFAs and other independent advisers. **As such, the Firm's assessment is that, taking into account the allowance made by the regime for proportionality, the relevant financial instruments (being ordinary shares admitted to trading on a regulated market) are compatible with a Target Market of retail investors and investors who meet the criteria of professional clients and eligible counterparties. Notwithstanding this assessment, on specific transactions the Firm may choose to only procure investors who meet the criteria of professional clients and eligible counterparties.**
2	Knowledge and experience: The Firm should specify the knowledge that the target clients should have about elements such as: the relevant product type, product features and/or knowledge in thematically related areas that help to understand the product. For example, for structured products with complicated return profiles, firms could specify that target investors should have knowledge of how this type of product works and the likely outcomes from the product. Regarding experience, the Firm could describe how much practical experience target clients should have with elements such as: relevant product type, relevant product features and/or experience in thematically	The relevant financial instrument is an ordinary share. It is the Firm's assessment that the institutional investors placed to by the Firm, being professional clients and/or eligible counterparties, have a sufficient degree of knowledge and experience about the features of ordinary shares and any thematically related areas that help understand the product. In making this assessment, the Firm has taken and will continue to take into account feedback sought and received from investors in relation to ordinary shares as a product. **It is also the Firm's assessment, without taking a view based on specific knowledge of individual end investors that, given the amount of information available through market-standard and mandatory and otherwise generally available disclosures, that a typical retail investor has a**

	ESMA Criteria	Response/Approach to Satisfaction of Criteria
	related areas. The Firm could specify, for example, a time period for which clients should already have been active in the financial markets. Knowledge and experience may be dependent on each other in some cases (i.e. an investor with limited or no experience could be a valid target client if they compensate missing experience with extensive knowledge).	**sufficient degree of knowledge and experience about the features of ordinary shares and any thematically related areas that help understand the product, and access (to the extent it requires or wishes) to IFAs and other independent advisers.** In making each of these assessments, the Firm is cognisant of the need for proportionality in the application of the EU product governance regime and of the protections provided by other elements of the existing regulatory regime, including those set out in Appendix 2. Notwithstanding any assessment undertaken by the Firm, the Firm notes that each Distributor will need to satisfy itself as to the appropriate knowledge and experience of the investors to whom it distributes relevant securities.
3	Financial situation with a focus on the ability to bear losses: The firm should specify the percentage of losses target clients should be able and willing to afford (for example, from minor losses to total loss) and if there are any additional payment obligations that might exceed the amount invested (for example, margin calls). This could also be phrased as a maximum proportion of assets that should be invested.	The relevant product is an ordinary share. There are no additional payment obligations that might exceed the amount invested but shareholders risk losing part or all of their investment in the relevant issuer. It is the Firm's assessment that the institutional investors placed to by the Firm, being professional clients and/or eligible counterparties, have a sufficient degree of understanding about the potential loss profile associated with an ordinary share. In making this assessment, the Firm has taken and will continue to take into account feedback sought and received from investors in relation to ordinary shares as a product. **It is also the Firm's assessment, without taking a view based on specific knowledge of individual end investors that, given the amount of information available through press and mandatory disclosures, a typical retail investor has a sufficient degree of understanding that the potential loss profile associated with an ordinary share is 100% capital loss and access, to the extent it requires or wishes, to IFAs and other independent advisers.** In making each of these assessments, the Firm is cognisant of the need for proportionality in the application of the EU product governance regime and of the

	ESMA Criteria	Response/Approach to Satisfaction of Criteria
		protections provided by other elements of the existing regulatory regime, including those set out in Appendix 2. Notwithstanding any assessment undertaken by the Firm, the Firm notes that each Distributor will need to satisfy itself as to the relevant financial situation of the investors to whom it distributes relevant securities.
4	Risk tolerance and compatibility of the risk/reward profile of the product with the Target Market: The Firm should specify the general attitude that target clients should have in relation to the risks of investment. Basic risk-attitudes should be categorised (for example, "risk oriented or speculative", "balanced", "conservative") and clearly described. Since different firms in the chain may have different approaches to defining risk, the Firm should be explicit about the criteria that must be met in order to categorise a client in this way. Firms should also use the risk indicator stipulated by the PRIIPs Regulation or the UCITS Directive, where applicable, to fulfil this requirement. Where relevant, firms should also consider the risks included in the narrative below the PRIIPs summary risk indicator, such as currency and/or liquidity risk.	The relevant product is an ordinary share. It is the Firm's assessment that the institutional investors placed to by the Firm, being professional clients and/or eligible counterparties, will each have carefully considered and developed attitudes to risk. It is the Firm's assessment that the institutional investors placed to by the Firm have a sufficient degree of understanding about the risk/reward profile associated with an ordinary share and a sufficient ability to make an appropriate assessment of the risks associated with an investment in the relevant financial instrument. In making this assessment, the Firm has taken and will continue to take into account feedback sought and received from investors in relation to ordinary shares as a product. **It is also the Firm's assessment, without taking a view based on specific knowledge of individual end investors that, given the amount of information available through mandatory and market-standard disclosures and otherwise generally available, a typical retail investor has a sufficient degree of understanding that the risk profile of an ordinary share is medium to high-risk, requiring a willingness to accept price fluctuations in exchange for the opportunity of higher returns and a sufficient ability to make an appropriate assessment of the risks associated with an investment in the relevant product, and access, to the extent it requires or wishes, to IFAs and other independent advisers.** The Firm notes that market-standard disclosures have been agreed for inclusion in relevant documentation. In making each of these assessments, the Firm is cognisant of the need for proportionality in the application of the EU product governance regime and of the

	ESMA Criteria	Response/Approach to Satisfaction of Criteria
		protections provided by other elements of the existing regulatory regime, including those set out in Appendix 2. Notwithstanding any assessment undertaken by the Firm, the Firm notes that each Distributor will need to satisfy itself as to the risk tolerance of any investors to whom it distributes relevant securities and the compatibility of the risk/reward profile of the investment with the end target market.
5	Clients' Objectives and Needs: The firm should specify the investment objectives and needs of target clients that a product is compatible with; including the wider financial goals of target clients or the overall strategy they follow when investing. Those objectives can be "fine-tuned" by specifying particular aspects of the investment and expectations of targeted clients. The particular clients' objectives and needs a product is intended to fulfil may vary from specific to more generic. For example, a product may be designed to meet the needs of a specific age demographic, to achieve tax efficiency based on clients' country of tax residence, or be designed with special product features to achieve specific investment objectives such as "currency protection", "regular payments", etc., as relevant. In addition, reference should be made to the expected investment horizon/recommended holding period (e.g., number of years the investment is to be held), duly considering the potential impacts for clients of an early exit (for example in terms of costs). Within the broad category of clients' objectives and needs, the firm should also specify any sustainability-related objectives the product is compatible with. To ensure a sufficient level of granularity of the target market, when identifying sustainability-related objectives, firms may specify, where relevant, the following aspects (in line with the definition of "sustainability preferences" according to Article 2(7) of the MiFID II Delegated	The relevant product is an ordinary share. It is the Firm's assessment that each of the institutional investors placed to by the Firm, being a professional client and/or eligible counterparty, will have carefully considered and developed investment objectives, which may have multiple elements and strands, including sustainability related objectives if relevant, and which may vary from time to time. The Firm believes that the institutional investors placed to by the Firm have a sufficient ability to determine their own investment objectives regarding ordinary shares and the role of the relevant financial instruments within them. In making this assessment, the Firm has taken and will continue to take into account feedback sought and received from investors in relation to ordinary shares as a product and the Firm's manufacturing and distribution of ordinary shares. **It is also the Firm's assessment that, without taking a view based on specific knowledge of individual investors that, given the amount of information available through mandatory and market-standard disclosures and otherwise generally available, which, if relevant, will contain information on environmental, social and governance matters, a typical retail investor has a sufficient ability to determine its investment objectives regarding ordinary shares, including sustainability related objectives if relevant, and the role of the relevant financial instruments within them, how such an investment would fit within that investor's needs and expectations and access, to the extent it requires or wishes, to IFAs and other independent advisers, who can advise their clients on, amongst other things,investment horizon and the compatibility of ordinary shares with the**

	Regulation and as further detailed in the ESMA Guidelines on certain aspects of the MiFID II suitability requirements): • The minimum proportion of the product that is invested in environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/85224; • The minimum proportion of the product that is invested in sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/208825; • Which principal adverse impacts (PAI) on sustainability factors are considered by the product, including quantitative or qualitative criteria demonstrating that consideration. Firms could use the categories presented in the SFDR RTS (instead of an approach based on each PAI indicator) such as “emissions”, “energy performance”, “water & waste”, etc. • Whether, where relevant, the product has a focus on either environmental, social or governance criteria or a combination of them.	**needs of clients who seek capital growth or potential dividend returns.** ***Note: While a Firm may, in line with the “base case” analysis above, and with particular reference to the need for proportionality in the application of the EU product governance regime, identify a Target Market for ordinary shares which does not set out specific sustainability related objectives, the Firm has the option to do so in respect of particular securities, for example if securities are to be marketed with certain sustainability features and directed at investors with specific sustainability related objectives.***

	ESMA Criteria	Response/Approach to Satisfaction of Criteria
	Note: For products which consider sustainability factors, the Firm is not required to identify a "negative" Target Market with respect to their sustainability related objectives, i.e. sustainability related objectives only contribute to identifying a "positive" Target Market in terms of clients (groups of clients) with compatible sustainability preferences.	In making each of these assessments, the Firm is cognisant of the need for proportionality in the application of the EU product governance regime and of the protections provided by other elements of the existing regulatory regime, including those set out in Appendix 2. Notwithstanding any assessment undertaken by the Firm, the Firm notes that each Distributor will need to satisfy itself as to the objectives and needs of the investors to whom it distributes relevant securities.

Appendix 2 – Proportionality

The concept of "proportionality" is central to the practical application of the EU product governance regime and "proportionality" should be assessed in the context of, and taking into account, eligibility criteria for listing and admission to trading and the wider existing framework of investor protection and risk mitigation. The features of the existing framework which are applicable will depend on the specific circumstances of each potential transaction, and may include:

- Eligibility criteria for listing and admission to trading
- Prospectus Regulation (and exemptions provided therefrom)/equivalent documentation,[7] including exemptions used in the context of undocumented block trades (with no prospectus required) (or recognised equivalent standards elsewhere)
- Other local disclosure standards (or equivalents outside the EU, including US standards whenever offers/sales are being made into the US)
- Index inclusion criteria
- Point of sale regulation regarding suitability and appropriateness and mis-selling affecting retail interactions by IFAs
- MAR and the EU Transparency Directive(or equivalents outside the EU)
- Continuing obligations under local listing requirements/equivalent regulation outside the EU
- Corporate governance codes (including comply or explain obligations) or equivalent standards outside the EU
- Local company law (or equivalents outside the EU)
- Local financial promotion legislation (or equivalent outside the EU)
- AIFMD additional protections where relevant.

We also suggest that the following factors will also play an important part in setting the context for any assessment of proportionality:

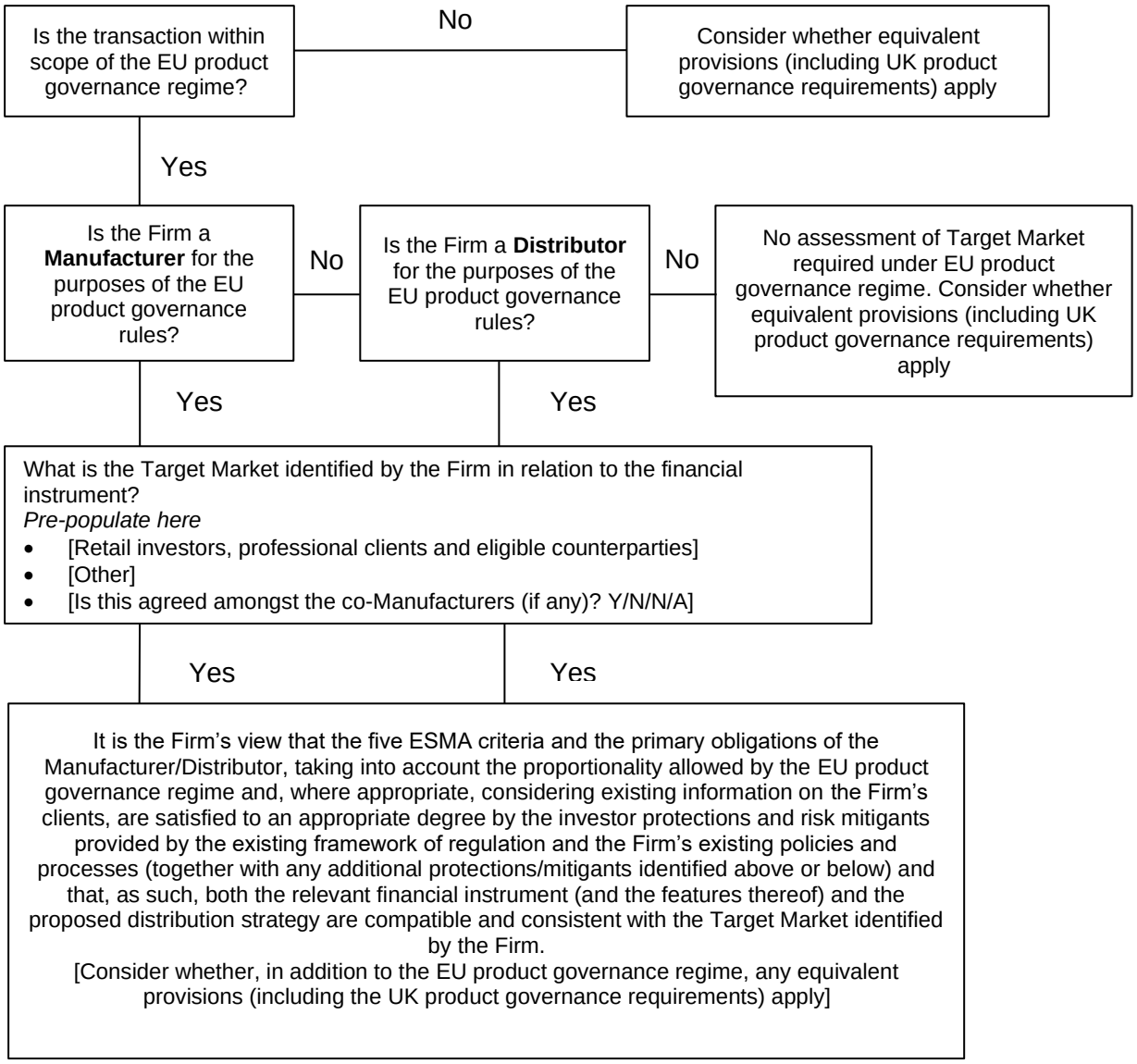
- Do the investors in question already hold securities of the relevant kind (as is the case in a rights issue for example)?
- Even if they do not already hold securities of the relevant kind, can the relevant investor in any case acquire the same securities through other means (for example in secondary offerings by listed issuers, or secondary sales by their shareholders) or ordinary trading on a regulated market?

In our view there is a strong argument that, in making their assessments, MiFID firms should not be expected to act in a manner which is inconsistent with the existing market and investor protection framework or which renders aspects of that framework irrelevant or unnecessary.

Appendix 3
Checklist for ECM Transactions

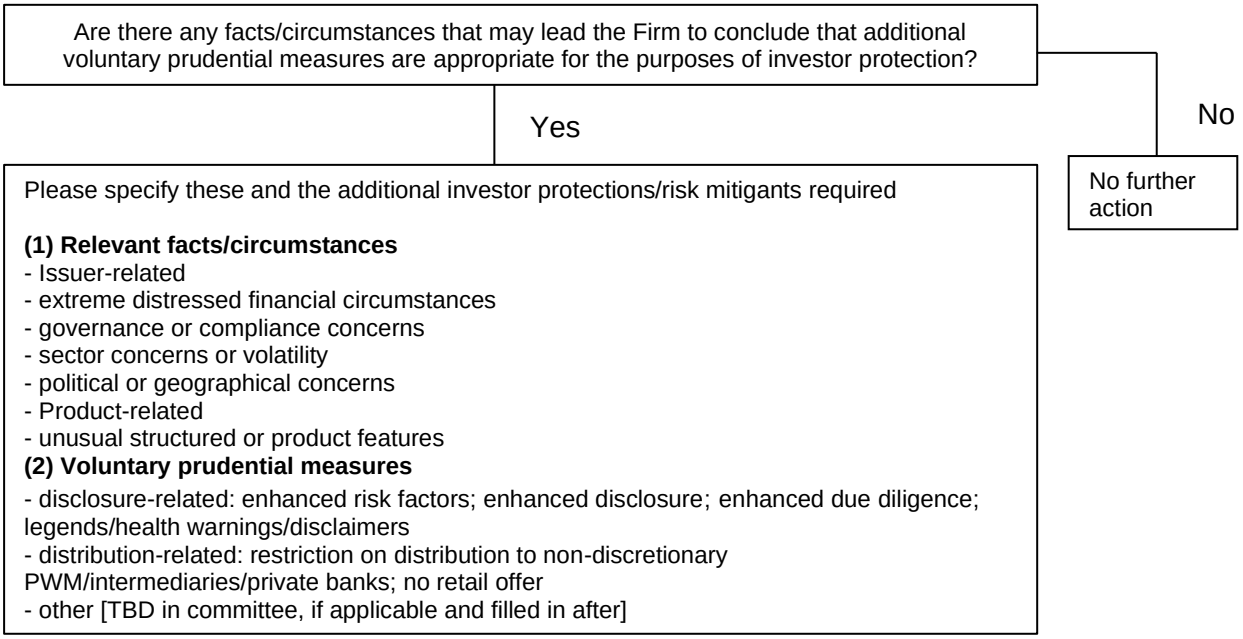
Sample flow chart for e.g. a transactional commitment committee memorandum

A. Product Governance



Appendix 3

B. Voluntary Prudential Measures



Appendix 4

Suggested language for inclusion in relevant documents on primary offerings

Please note that the language included within this Appendix is relevant to transactions where the Firm is acting as a Manufacturer (i.e. a primary issue of shares). It is not required to be included in relevant documentation on undocumented secondary sales by a shareholder such as a typical block trade. Please refer to the Firm's policy regarding secondary market trading for rubrics to be included on such transactions, if any are used, or rely on sales and trading's standard terms of business, if appropriate.

Section 1 – Among co-Manufacturers

Article 9(8) of Commission Delegated Directive 2017/593 requires Firms acting as Manufacturers who collaborate to create, develop, issue and/or design a product to outline their mutual responsibilities in a written agreement (see further Section 7 above).

Sample language for inclusion in an Underwriting Agreement/Agreement Among Managers /email sent round and agreed among JBRs.

Solely for the purposes of Article 9(8) of Commission Delegated Directive 2017/593 (the "**Delegated Directive**") regarding the responsibilities of Manufacturers under the Product Governance requirements contained within: (a) Directive 2014/65/EU on markets in financial instruments, as amended ("**MiFID II**"); (b) Articles 9 and 10 of the Delegated Directive; and (c) local implementing measures (the "**MiFID II Product Governance Requirements**"), each [Joint Bookrunner][9] acknowledges [to each other [Joint Bookrunner]] that it understands the responsibilities conferred upon it under the MiFID II Product Governance Requirements relating to: (i) the target market for the Offer; (ii) the eligible distribution channels for dissemination of the [securities the subject of the Offer][10], each as set out in the [Prospectus] [Announcement] [to be] dated [●] in relation to the Offer; and (iii) the requirement to carry out a product approval process.

Section 2 – Information to be provided to Distributors

Article 9(13) of Commission Delegated Directive 2017/593 requires Firms acting as Manufacturers to ensure that Distributors are provided with sufficient information regarding the Target Market, the product approval process and appropriate channels for distribution. Article 10(2) confers obligations on Distributors (see further Section 3 above).

Sample language for inclusion in a Prospectus/Press Announcement/Bloomberg notice

9 This should include all entities deemed to be Manufacturers in the relevant offering (although it is acknowledged that, particularly when collaborating with firms that are not subject to EU product governance requirements, this may not be possible and, in those circumstances, in line with the principle of proportionality, it is the view of the AFME Working Group that it is acceptable for those Manufacturers who are MiFID firms to fulfil the requirements on manufacturers themselves without the need for non-EU Manufacturers to sign an agreement confirming the allocation of responsibilities).This should be considered on a case-by-case basis and will vary depending on the facts of the relevant offering/which entities are deemed to "create, develop, issue and/or design investment products" (Art 9(1) of the Delegated Directive), which (as described in the ESMA Technical Advice of 19 December 2014) includes entities, "*advising the issuer on the launch of the new securities*" (i.e. liaising with the issuer in structuring the launch, book-build and allocation of the new securities). In some cases (for example where the Global Co-ordinators are the entities substantively liaising with the issuer), it may be appropriate for the Global Co-ordinators to be considered the co-Manufacturers. Consider whether the issuer will be a co-Manufacturer (particularly in cases where the issuer is a regulated entity), in which case the language may be more appropriately contained within the underwriting agreement. On an undocumented secondary sale by a shareholder such as a typical block trade, Firms will not typically "create", develop, issue and/or design an investment product and will not typically be advising the issuer on the launch of new securities. Firms will, however, typically act as a Distributor on such transactions.

10 Conform to the definitions included in any document in which this is included.

Information to Distributors – EU Product Governance[11]

Solely for the purposes of the product governance requirements contained within: (a) EU Directive 2014/65/EU on markets in financial instruments, as amended ("**MiFID II**"); (b) Articles 9 and 10 of Commission Delegated Directive (EU) 2017/593 supplementing MiFID II; and (c) local implementing measures (together, the "**MiFID II Product Governance Requirements**") and/or any equivalent requirements elsewhere to the extent determined to be applicable, and disclaiming all and any liability, whether arising in tort, contract or otherwise, which any "manufacturer" (for the purposes of the MiFID II Product Governance Requirements and/or any equivalent requirements elsewhere to the extent determined to be applicable) may otherwise have with respect thereto, [the securities the subject of the Offer] have been subject to a product approval process, which has determined that [such securities][12] are: (i) compatible with an end target market of retail investors and investors who meet the criteria of professional clients and eligible counterparties, each as defined in MiFID II; and (ii) eligible for distribution through all distribution channels as are permitted by MiFID II (the "**Target Market Assessment**"). Notwithstanding the Target Market Assessment, Distributors should note that: the price of [the securities[13]] may decline and investors could lose all or part of their investment; [the securities[14]] offer no guaranteed income and no capital protection; and an investment in [the securities[15]] is compatible only with investors who do not need a guaranteed income or capital protection, who (either alone or in conjunction with an appropriate financial or other adviser) are capable of evaluating the merits and risks of such an investment and who have sufficient resources to be able to bear any losses that may result therefrom. The Target Market Assessment is without prejudice to the requirements of any contractual, legal or regulatory selling restrictions in relation to the Offer.[16] [Furthermore, it is noted that, notwithstanding the Target Market Assessment, the [Joint Bookrunners] will only procure investors who meet the criteria of professional clients and eligible counterparties.][17]

For the avoidance of doubt, the Target Market Assessment does not constitute: (a) an assessment of suitability or appropriateness for the purposes of MiFID II; or (b) a recommendation to any investor or group of investors to invest in, or purchase, or take any other action whatsoever with respect to [the securities].[18]

Each distributor is responsible for undertaking its own target market assessment in respect of the [securities][19] and determining appropriate distribution channels.

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[11] This covers the EU product governance regime only. If other regimes apply additional wording may be needed.

[12] Conform to the definitions included in any document in which this is included.

[13] Conform as appropriate.

[14] Conform as appropriate.

[15] Conform as appropriate.

[16] Conform as appropriate.

[17] Amend as appropriate to reflect the circumstances of the transaction. On transactions where there is a retail/intermediary offer, consider whether this language should be included.

[18] Conform as appropriate.

[19] Conform to the definitions included in any document in which this is included. On transactions where there is a retail/intermediary offer, consider whether this language should be included.

Information to Distributors

Solely for the purposes of the product governance requirements of Directive 2014/65/EU on markets in financial instruments, as amended ("**MiFID II**") and local implementing measures, and disclaiming all and any liability, whether arising in tort, contract or otherwise, which any "manufacturer" (for the purposes of the Product Governance Requirements) may otherwise have with respect thereto, the [securities the subject of the Offer][20] have been subject to a product approval process, which has determined that such [securities]21 are: (i) compatible with an end target market of retail investors and investors who meet the criteria of professional clients and eligible counterparties, each as defined in MiFID II; and (ii) eligible for distribution through all distribution channels as are permitted by MiFID II (the "Target Market Assessment"). Notwithstanding the Target Market Assessment, Distributors should note that: the price of [the securities22] may decline and investors could lose all or part of their investment; [the securities23] offer no guaranteed income and no capital protection; and an investment in [the securities24] is compatible only with investors who do not need a guaranteed income or capital protection, who (either alone or in conjunction with an appropriate financial or other adviser) are capable of evaluating the merits and risks of such an investment and who have sufficient resources to be able to bear any losses that may result therefrom. The Target Market Assessment is without prejudice to any contractual, legal or regulatory selling restrictions in relation to the Offer.25 [Furthermore, it is noted that, notwithstanding the Target Market Assessment, the [Joint Bookrunners] will only procure investors who meet the criteria of professional clients and eligible counterparties.]26 For the avoidance of doubt, the Target Market Assessment does not constitute: (a) an assessment of suitability or appropriateness for the purposes of MiFID II; or (b) a recommendation to any investor or group of investors to invest in, or purchase, or take any other action whatsoever with respect to [the securities].27
Each distributor is responsible for undertaking its own target market assessment in respect of the [securities]28 and determining appropriate distribution channels.

[20] Conform as appropriate.

[21] Conform as appropriate.

[22] Conform as appropriate.

[23] Conform as appropriate.

[24] Conform as appropriate.

[25] Conform as appropriate.

[26] Amend as appropriate to reflect the circumstances of the transaction. On transactions where there is a retail/intermediary offer, consider whether this language should be included.

[27] Conform as appropriate.

[28] Conform as appropriate.

Appendix 5
Voluntary Prudential Measures the Firm may wish to consider at the time of the relevant offer/distribution

This Appendix sets out, as a matter separate to and outside the scope of, the Firm's Product Governance obligations, voluntary prudential measures that the Firm may wish to consider in appropriate circumstances for the purposes of investor protection.

A.	Are there facts or circumstances that may lead the Firm to determine, on a specific transaction, that voluntary additional prudential protections or risk mitigants may be appropriate for the purposes of investor protection?	These facts or circumstances could include the following: (i) *Issuer-related* – for example, extreme distressed financial circumstances (e.g. balance sheet or trading weakness or working capital concerns) or active investigations for governance/compliance matters, sector volatility or jurisdictional concerns such as political instability, in each case at the time of the relevant offer/distribution. (ii) *Product-related* – have there been significant adaptations to, or additional structural complexities incorporated into, the product? Are there any features of the product which present a materially greater risk to the investment, or to the investor's understanding of the product, than would be the case with a typical investment proposition for an investment in an ordinary share? It is not expected that offers of ordinary shares will typically include such unusual features. Examples of unusual features include restrictions on transferability, a risk of loss above and beyond the initial investment price, complexity in relation to the nature or quantum of any returns or the corporate structure of the issuer and its share capital and unusual convertibility/exchangeability. It should be emphasised that the existence of any of these facts or circumstances, or any combination of any of these facts or circumstances, should not necessarily of itself result in a determination that additional investor protections or risk mitigants are appropriate. Indeed, in the case of most transactions in ordinary shares on a regulated market, it is likely they will not. These facts or circumstances may, however, in certain unusual or extreme circumstances, represent a trigger to consider further analysis. It is worth noting in particular the specific protections provided under the existing regulatory framework for many of these situations, such as existing disclosure requirements for qualified working capital statements and additional protections for retail offers (minimum availability periods etc.).

B.	If, on a specific transaction, the Firm were to consider that voluntary additional prudential protections or risk mitigants are required, what options are available?	If, on a specific transaction, the Firm were to consider that voluntary additional prudential protections or risk mitigants are required, the following options may be considered: **Disclosure-related measures** (i) *Additional disclosure in prospectus/equivalent/other relevant documentation* – this may take the form of enhancements to the due diligence completed by the Firm in connection with the relevant transaction, and any enhancements to investor disclosure, including in each case in relation to the business of the issuer/risks to investment. Enhancements to the investor disclosure may include enhanced risk factors, making certain risks more prominent, and/or legends/warnings appearing early in documents or on "click-throughs". (ii) *Voluntary prospectus/equivalent document preparation* – this would mean consideration given as to whether a prospectus/equivalent document should be prepared on a voluntary basis where such a document is not required under existing regulation. **Distribution-related measures** *Restrictions on distribution* – this could include a decision to restrict distribution of an ordinary share offering solely to investors who meet the criteria of professional clients and eligible counterparties, and, in certain exceptional situations, to use reasonable efforts not to distribute to investors to the extent that the Firm is aware that such clients would be buying on a non-discretionary basis for retail clients, as may be the case for clients such as private banks, wealth managers and intermediaries, in accordance with its existing policies and procedures. **Other potential measures** (i) *Operational solutions* – in extreme circumstances, consideration might be given to the practicability of implementing operational restrictions to reduce the possibility of the product ending up in the hands of retail investors, such as a CREST-based flagging system (noting that such a system is likely to be impractical in most situations). (ii) *Changes to product features* – for example, further thought given as to whether to change (e.g. simplify) those features of the product which gave rise to the desire for additional prudential measures initially.

		(iii)	*Pull out of deal* – as a final measure, this option is available to Manufacturers and Distributors.