

Effective from 1 January 2021

AFME SELLING RESTRICTIONS FOR EQUITY (EEA AND UK)

The wording below sets out the selling restrictions for equity transactions for use in documentation for offerings or admissions taking place from January 2021 onwards.

These selling restrictions have been drafted on the basis that the implementation period under the UK EU Withdrawal Agreement has ended. AFME will continue to monitor any relevant developments and the policy of the UK Government and review whether any changes to these selling restrictions may be required.

The EEA selling restriction wording reflects the application in the EEA of Regulation EU 2017/1129 of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market. As a Regulation, it is binding in its entirety and directly applicable in all EEA Member States. Given this, no implementing measures were required at a national level. Therefore, there should be no need for additional or alternative Prospectus Regulation selling restrictions in relation to public offers in EEA jurisdictions, although there may be a need for additional selling restrictions to address other local requirements.

The UK selling restriction wording reflects the UK version of the Prospectus Regulation as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018.

EQUITY SELLING RESTRICTION WORDING FROM THE END OF THE IMPLEMENTATION PERIOD

The wording comprises an EEA and a mirror United Kingdom public offer equity selling restriction (with separate forms for insertion into transaction contracts e.g. underwriting agreements and prospectuses, respectively) and a selling restriction addressing additional United Kingdom securities law (for insertion into transaction contracts), as follows.

EEA public offer selling restriction (for transaction contracts)

In relation to each Member State of the European Economic Area (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 Relevant 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 Relevant State where prospectus will be approved]* and published [and notified to the relevant competent authorit(y)/(ies)] in accordance with the Prospectus Regulation, 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:

- (a) to any legal entity which is a qualified investor as defined under Article 2 of the Prospectus Regulation;
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the Prospectus Regulation), subject to obtaining the prior consent of [the Global Co-ordinator] for any such offer; or
- (c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of the Shares shall require the Issuer or any Manager to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

For the purposes of this provision, the expression an “offer to the public” in relation to the 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, and the expression “Prospectus Regulation” means Regulation (EU) 2017/1129.

EEA public offer selling restriction (for prospectuses)

In relation to each Member State of the European Economic Area (each a “Relevant State”), no Shares have been offered or will be offered pursuant to the [Offering] to the public in that Relevant State prior to the publication of a prospectus in relation to the Shares which has been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation, except that the Shares may be offered to the public in that Relevant State at any time:

- (a) to any legal entity which is a qualified investor as defined under Article 2 of the Prospectus Regulation;
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the Prospectus Regulation), subject to obtaining the prior consent of [the Global Co-ordinator] for any such offer; or
- (c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of the Shares shall require the Company or any [Manager] to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

For the purposes of this provision, the expression an “offer to the public” in relation to the 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, and the expression “Prospectus Regulation” means Regulation (EU) 2017/1129.

United Kingdom public offer selling restriction (for transaction contracts)

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 been approved by the Financial Conduct Authority and published in accordance with the UK Prospectus Regulation]]¹ provided that the Issuer has consented in writing to

¹ At the end of the implementation period, the ability to passport a prospectus between the UK and EU under the EU Prospectus Regulation EU 2017/1129 ended. However, relevant UK exit regulations provide that prospectuses approved by an EU competent authority under the EU Prospectus Regulation and passported into the UK before exit day will be grandfathered for use in the UK until their validity expires. As a result, a prospectus may be treated as approved by the FCA where the FCA received a notification of approval in accordance with the EU Prospectus Regulation by the Relevant State, where the prospectus was approved on or before 11.00pm (UK time) on 31 December 2020 for the purposes of Article 74 (transitional provisions) of the Prospectus (Amendment etc) (EU Exit) Regulations 2019 (as amended).

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:

- (a) to any legal entity which is a qualified investor as defined under Article 2 of the UK Prospectus Regulation;
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the UK Prospectus Regulation), 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 the 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 Article 23 of the UK Prospectus Regulation.

For the purposes of this provision, the expression an “offer to the public” in relation to the 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 any Shares to be offered so as to enable an investor to decide to purchase or subscribe for any Shares and the expression “UK Prospectus Regulation” means Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018.

United Kingdom public offer selling restriction for prospectuses

No Shares have been offered or will be offered pursuant to the [Offering] to the public in the United Kingdom prior to the publication of a prospectus in relation to the Shares which [has been approved by the Financial Conduct Authority] [is to be treated as if it had been approved by the Financial Conduct Authority in accordance with the transitional provisions in Article 74 (transitional provisions) of the Prospectus Amendment etc (EU Exit) Regulations 2019/1234], except that the Shares may be offered to the public in the United Kingdom at any time:

- (a) to any legal entity which is a qualified investor as defined under Article 2 of the UK Prospectus Regulation;
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the UK Prospectus Regulation), 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 the 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 Article 23 of the UK Prospectus Regulation. For the purposes of this provision, the expression an “offer to the public” in relation to the 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 any Shares to be offered so as to enable an investor to decide to purchase

or subscribe for any Shares and the expression “UK Prospectus Regulation” means Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018.

Selling restrictions addressing additional United Kingdom securities laws (for transaction contracts)

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

(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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