# MiFID II Product Governance riders

## Language to be included *e.g.* in the beginning of an MTN prospectus

The Final Terms[[1]](#footnote-1) in respect of any [Notes] will include the target market assessment in respect of the [Notes] and appropriate channels for distribution of the [Notes]. Any person subsequently offering, selling or recommending the [Notes] (a “**distributor**”) should take into consideration the target market assessment. However, a distributor subject to [Directive 2014/65/EU (as amended, “**MiFID II**”)/MiFID II] is responsible for undertaking its own target market assessment in respect of the [Notes] (by either adopting or refining the target market assessment) and determining appropriate distribution channels.

For the purpose of the MiFID Product Governance rules under EU Delegated Directive 2017/593 (the “**MiFID Product Governance Rules**”), a determination will be made in relation to each issue about whether the Arranger or any Dealer participating in the issue of the [Notes] is a manufacturer in respect of such [Notes]. [[2]](#footnote-2) Neither the Arranger nor the Dealers nor any of their respective affiliates that do not participate in an issue will be a manufacturer for the purpose of the MIFID Product Governance Rules.

## Language to be included *e.g.* in a separate agreement between the dealers, an investor presentation, final terms or in a prospectus for a stand-alone issuance

### Target market: *professional clients and ECPs only*

Solely for the purposes of the product governance requirements set forth in [Directive 2014/65/EU (as amended, “**MiFID II**”)/MiFID II], the target market assessment made by the manufacturer[s] in respect of the [Notes] has led to the conclusion that: (i) the target market for the [Notes] is eligible counterparties and professional clients only, each as defined in MiFID II; (ii) [the negative target market for the [Notes] is clients that seek full capital protection or full repayment of the amount invested, are fully risk averse/have no risk tolerance or need a fully guaranteed income or fully predictable return profile; and (iii)] [[3]](#footnote-3) all channels for distribution of the [Notes] to eligible counterparties and professional clients are appropriate. Any person subsequently offering, selling or recommending the [Notes] (a “**distributor**”) should take into consideration the manufacturer[’s/s’] target market assessment. However, a distributor subject to MiFID II is responsible for undertaking its own target market assessment in respect of the [Notes] (by either adopting or refining the manufacturer[’s/s’] target market assessment) and determining appropriate distribution channels.

**[OR]**

### Target market: retail clients, professional clients and ECPs

Solely for the purposes of the product governance requirements set forth in [Directive 2014/65/EU (as amended, “**MiFID II**”)/MiFID II], the manufacturer[s] [has/have] made a target market assessment in respect of the [Notes], and [has/have] concluded that the target group for the [Notes] is:[[4]](#footnote-4),[[5]](#footnote-5)

1. *Type of client[[6]](#footnote-6)*: Clients that are eligible counterparties, professional clients and retail clients, each as defined in MiFID II.
2. *Knowledge and experience[[7]](#footnote-7):* [Clients that are basic investors [(*i.e.* clients holding basic knowledge of bonds and the credit market and [no] experience of financial markets)].]
3. *Financial situation and the ability to bear losses[[8]](#footnote-8):* [Clients that have the ability to bear losses of up to [•]% of the capital invested in the [Notes]. / Clients that do not allocate more than [•]% of their total assets in instruments issued by the same issuer.]
4. *Risk tolerance[[9]](#footnote-9):* [Clients with a [low / balanced / speculative] risk tolerance. Clients investing in the [Notes] are typically willing to take more risk than deposit savings but do not want to invest in the equity market.][[10]](#footnote-10)
5. *Investment objective[[11]](#footnote-11):* [Clients whose investment objective is to [preserve / generate income from / generate growth of] the invested capital and have a [very short / short / medium / long] term investment horison.][[12]](#footnote-12)
6. [Furthermore, the manufacturer[s] [has/have] made an assessment as to the negative target market and concluded that the negative target market for the [Notes] is clients that seek full capital protection or full repayment of the amount invested, are fully risk averse/have no risk tolerance or need a fully guaranteed income or fully predictable return profile.][[13]](#footnote-13)

The manufacturer[s] [has/have] made an assessment as to the distribution strategy for the [Notes], and [has/have] concluded that [***EITHER***][[14]](#footnote-14) all channels for distribution of the [Notes] are appropriate[, including investment advice, portfolio management, non-advised sales and pure execution services][[15]](#footnote-15) [***OR***][[16]](#footnote-16) all channels for distribution to eligible counterparties and professional clients are appropriate; and (iii) the following channels for distribution of the [Notes] to retail clients are appropriate – investment advice[,/ and] portfolio management[,/ and][ non-advised sales ][and pure execution services][, subject to the distributor’s suitability and appropriateness obligations under MiFID II, as applicable]. Any person subsequently offering, selling or recommending the [Notes] (a “**distributor**”) should take into consideration the manufacturer[’s/s’] target market assessment. However, a distributor subject to MiFID II is responsible for undertaking its own target market assessment in respect of the [Notes] (by either adopting or refining the manufacturer[‘s/s’] target market assessment) and determining appropriate distribution channels[, subject to the distributor’s suitability and appropriateness obligations under MiFID II, as applicable.[[17]](#footnote-17)]

## Language to be included *e.g.* in a dealer agreement (*emissionsavtal*) for an MTN programme or a mandate letter for a stand-alone issuance

For the purpose of the MiFID Product Governance rules under EU Delegated Directive 2017/593 (the “**MiFID Product Governance Rules**”), a determination will be made in relation to each issue about whether the Arranger or any Dealer participating in the issue of the [Notes] is a manufacturer in respect of such [Notes]. [[18]](#footnote-18), Neither the Arranger nor the Dealers nor any of their respective affiliates that do not participate in an issue will be a manufacturer for the purpose of the MIFID Product Governance Rules.[[19]](#footnote-19)

## Language to be included *e.g.* in a separate agreement between managers, a mandate letter for an issuance under an MTN programme or a dealer agreement for a stand-alone issuance

Solely for the purposes of the requirements of Article 9(8) of the MIFID Product Governance rules under EU Delegated Directive 2017/593 (the “**MiFID Product Governance Rules**”) regarding the mutual responsibilities of manufacturers under the MIFID Product Governance Rules:

1. each of [the Issuer [, the Guarantor[s]] and] the [[Joint] Lead Manager[s]/[identify Manager(s) who is/are deemed to be MiFID manufacturer(s)] (each a “**Manufacturer**” and together the“**Manufacturers**”) acknowledges to each other Manufacturer that it understands the responsibilities conferred upon it under the MIFID Product Governance Rules relating to each of the product approval process, the target market and the proposed distribution channels as applying to the [Notes] and the related information set out in the [investor presentation / final terms / prospectus] in connection with the [Notes]; and
2. the [Managers] [and the/, the][ Issuer[ and the Guarantor[s]] note the application of the MIFID Product Governance Rules and acknowledge the target market and distribution channels identified as applying to the [Notes] by the Manufacturer[s] and the related information set out in the [investor presentation / final terms / prospectus] in connection with the [Notes].

# PRIIPs rider[[20]](#footnote-20)

## Language to be included *e.g.* in an investor presentation, a separate agreement between the issuer and the managers or a prospectus for a stand-alone issuance not offered to retail investors, provided that the [Notes] constitute a PRIIP product.

The [Notes] are not intended to be offered, sold or otherwise made available to, and should not be offered, sold or otherwise made available to, any retail investor in the European Economic Area (“**EEA**”). For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of [Directive 2014/65/EU (as amended, “**MiFID II**”)/MiFID II]; (ii) a customer within the meaning of Directive 2002/92/EC (as amended, the “**Insurance Mediation Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (iii) not a qualified investor as defined in Directive 2003/71/EC (as amended, the “**Prospectus Directive**”). [Consequently no key information document required by Regulation (EU) No 1286/2014 (as amended the “**PRIIPs Regulation**”) for offering or selling the [Notes] or otherwise making them available to retail investors in the EEA has been prepared and therefore offering or selling the [Notes] or otherwise making them available to any retail investor in the EEA may be unlawful under the PRIIPs Regulation.][[21]](#footnote-21)

## Language to be included *e.g.* in a separate agreement between the issuer and the managers or in an MTN prospectus, provided that [Notes] under the programme possibly could constitute a PRIIP product.

Should certain issues of the [Notes] be subject to Regulation (EU) No 1286/2014 (as amended the “**PRIIPs Regulation**”), such [Notes] may not be offered, sold or otherwise made available to any retail investor in the European Economic Area (“**EEA**”). This limitation is a result of the fact that no key information document required under the PRIIPs Regulation has been, or will be, prepared for any [Notes] under the programme, which is required when the [Notes] subject to the PRIIPs Regulation are offered to retail investors. Consequently, the offering or selling of the [Notes], or otherwise making them available to any retail investor in the EEA, may be unlawful under the PRIIPs Regulation. A retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of [Directive 2014/65/EU (as amended, “**MiFID II**”)/MiFID II]; (ii) a customer within the meaning of Directive 2002/92/EC (as amended, the “**Insurance Mediation Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (iii) not a qualified investor as defined in Directive 2003/71/EC (as amended, the “**Prospectus Directive**”).

Detta dokument utgör ett förslag till malltext som har tagits fram av en arbetsgrupp inom Svenska Fondhandlareföreningen. Inom ramen för arbetet har synpunkter från ett antal olika intressenter på den svenska obligationsmarknaden inhämtats och beaktats.

Dokumentet innehåller s.k. riders som kan inkluderas i den dokumentation som används vid emissioner av obligationer för att uppfylla kraven avseende product governance i MiFID II.

Dokumentet innehåller ett antal fotnoter och texter inom hakparentes. Det indikerar att texterna kan tas med i de slutliga villkoren beroende på överväganden avseende den specifika emissionen eller att det finns olika alternativ eller uppfattningar avseende den relevanta frågan. Den som använder dokumentet som utgångspunkt för att ta fram villkor har själv att ta ställning till om och i vilken omfattning dessa villkor passar för den aktuella emissionen.

Dokumentet reflekterar inte marknadspraxis och utgör inte heller någon standard. Den som använder dokumentet som utgångspunkt för att ta fram villkor måste göra sin egen bedömning och har själv att ta ställning till om och i vilken omfattning dessa villkor passar för den aktuella emissionen, dvs. varje användare bör involvera sin egen legala rådgivare och ansvarar själv för att texten uppfyller tillämpliga lagar, regler och föreskrifter.

Svenska Fondhandlareföreningens medlemmar och andra som använder dokumentet uppmanas att skicka in eventuella synpunkter på dokumentet till kansliet per email. Dokumentet kommer att uppdateras med jämna mellanrum.

Kansliets kontaktperson: Erica Johansson (erica@fondhandlarna.se; +46 8 562 607 05)
Svenska Fondhandlareföreningen (Swedish Securities Dealers Association)
Postadress: Box 1426, 111 84 Stockholm
Adress: SE - Blasieholmsgatan 4B, 4 tr
[www.fondhandlarna.se](http://www.fondhandlarna.se)

1. If target market information will not be included in the final terms, the first sentence should be updated, *e.g.* according to the following example wording: “*In respect of each issue of the [Notes], a target market assessment will be made in respect of the [Notes] and appropriate channels for distribution of the [Notes] will be determined.*”. [↑](#footnote-ref-1)
2. Assessment to be made in relation to each issue whether the entities involved are creating, developing, designing or issuing the financial instrument, and, in relation to a non-MiFID entity, advising the issuer in respect of the issue. [↑](#footnote-ref-2)
3. It should be considered whether the product would be incompatible with the needs, characteristics or objectives of certain clients (i.e. negative target market). The negative target market is not necessarily the opposite of the positive target market, and it is not likely that the absence of an explicit negative target market would result in the negative target market being determined on a contrario basis of the positive target market (see ESMA PG guidelines paragraph 68 and ESMA’s Final Report on Guidelines on MiFID II product governance requirements paragraph 52). Manufacturers and distributors may cooperate in determining the target market. However, both manufacturers and distributors retain their responsibility for the obligations to identify a target market as described in MiFID II and the MiFID II Delegated Directive and further specified in the ESMA PG guidelines to identify a target market (see ESMA PG guidelines paragraph 39). Consequently, based on the position that the manufacturers retain their responsibility, it does not seem to be compliant to not establish a negative target market (if any) by referring to the distributors’ negative target market.

The same criteria as applied when determining the target market should be used for the negative target market assessment. See ESMA PG guidelines paragraphs 67-74 and the SFSA’s decision memo p. 35. Further, it should be noted that the practice in the European equity market (and also the position adopted by ICMA) seems to be that a negative target market would be identified rarely or never. This view is supported by various financial market associations which have emphasised that the nature and features of plain vanilla products (such as ordinary shares and bonds admitted to trading) and the PG proportionality regime provides for a possibility to avoid establishing a negative target market. [↑](#footnote-ref-3)
4. The target market assessment is based on plain vanilla corporate bonds. Generally, in order to avoid the risk of misinterpretations and misunderstandings, manufacturers should clearly define the concepts and terminology used when defining the target market (see ESMA PG guidelines paragraph 20). However, if there is common understanding of the concepts and terminology communicated between manufactures and distributers, such additional descriptions and definitions can likely be limited. Language in items (b) and (d)–(e) assumes a common understanding/template defining the terminology, *e.g.* European MiFID Template. Otherwise additional colour should be included in order to avoid non-defined terminology. [↑](#footnote-ref-4)
5. The description should be as clear as possible and non-defined terminology should be avoided to facilitate each distributor’s understanding of the target market (see ESMA PG guidelines paragraph 20). [↑](#footnote-ref-5)
6. See ESMA PG guidelines paragraphs 13-20 and the SFSA’s decision memo p. 33-35. [↑](#footnote-ref-6)
7. See ESMA PG guidelines paragraphs 13-20 and the SFSA’s decision memo p. 33-35. [↑](#footnote-ref-7)
8. See ESMA PG guidelines paragraphs 13-20 and the SFSA’s decision memo p. 33-35. [↑](#footnote-ref-8)
9. See ESMA PG guidelines paragraphs 13-20 and the SFSA’s decision memo p. 33-35. [↑](#footnote-ref-9)
10. To be included if a PRIIPs KIID has been prepared in respect of the [Notes]: “*The [Notes] carry the risk of [•] on a scale where 7 is the highest risk, as defined in [the Regulation (EU) No 1286/2014 (as amended the “****PRIIPs Regulation***”) / PRIIPs].”. [↑](#footnote-ref-10)
11. See ESMA PG guidelines paragraphs 13-20 and the SFSA’s decision memo p. 33-35. [↑](#footnote-ref-11)
12. Include description about special investment purposes (if any), such as ethical or green investments (see the SFSA’s decision memo p. 34). [↑](#footnote-ref-12)
13. See footnote 2. Language is based on “*Case study 4*” in [ESMA’s Final Report on Guidelines on MiFID II product governance requirements](https://www.esma.europa.eu/sites/default/files/library/esma35-43-620_guidelines_on_mifid_ii_product_governance_requirements_0.pdf) which illustrates an assessment in respect of ordinary shares. [↑](#footnote-ref-13)
14. Include for bonds that are not ESMA complex (ESMA complex instruments are e.g. debt instruments embedding derivatives, such as convertible and exchangeable bonds, or debt instruments incorporating a structure making it difficult for the client to understand the risk, such as instruments where the return is dependent on the performance of a defined asset pool or that contain leverage features). See ESMA PG guidelines on complex debt instruments and structured deposits for addition guidance. [↑](#footnote-ref-14)
15. This list may not be necessary, especially for bonds that are not ESMA complex where all channels of distribution may be appropriate. It reflects the list used in the examples in the ESMA PG guidelines. [↑](#footnote-ref-15)
16. Include for certain ESMA complex bonds. This list may need to be amended, for example, if advised sales are deemed necessary. If there are advised sales, a determination of suitability will be necessary. In addition, if the instruments constitute “complex” products, pure execution services are not permitted to retail clients without the need to make the determination of appropriateness required under Article 25(3) of MiFID II. [↑](#footnote-ref-16)
17. If the instruments constitute “complex” products, pure execution services are not permitted to retail without the need to make the determination of appropriateness required under Article 25(3) of MiFID II. If there are advised sales, a determination of suitability will be necessary. [↑](#footnote-ref-17)
18. Assessment to be made in relation to each issue whether the entities involved are creating, developing, designing or issuing the financial instrument, and, in relation to a non-MiFID entity, advising the issuer in respect of the issue. [↑](#footnote-ref-18)
19. Should information on sales be required, consider including: “*Any Arranger, Dealer or any of their respective affiliates that offers, recommends or sells the [Notes] in connection with the issuance of the [Notes] shall provide the Manufacturer[s] with appropriate information on sales, including information on sales outside the target market as defined by the Manufacturer[s], save for sales made for diversification or hedging purposes, provided these diversification- or hedging-related sales are not conducted on the negative target market.*”. [↑](#footnote-ref-19)
20. Sections 2.1 and 2.2 address the situation where the [Notes] constitute or possibly could constitute a PRIIP product, but explain the reasons for the [Notes] not being offered to retail clients differently. Section 2.1 is prepared for the situation where the final terms of the [Notes] are known and section 2.2 is prepared for the situation where the final terms are unknown. [↑](#footnote-ref-20)
21. To be deleted if the product is considered not to constitute a PRIIP product. [↑](#footnote-ref-21)