

# Primary Market Technical Note

## Final Terms

The information in this note is designed to help issuers and practitioners interpret our Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA.

PR Regulation Annexes 14-19, 27 and 28; ESMA Questions and Answers on Prospectuses (Q&As)

### What information can I include in the final terms?

Article 26 of the PR Regulation (Regulation number 2019/980 of the European Commission) states that final terms can only contain the following: (1) Category B information as set out in Annexes 14 to 19 and 27 of the PR Regulation where the details of that information are not known at the time of approval of the base prospectus; (2) Category C information as set out in Annexes 14 to 19 and 27 of the PR Regulation unless it is known at the time of approval of the base prospectus (in which case it may be inserted in the base prospectus instead); and (3) information set out in Annex 28. Information that does not fall within these categories cannot be included in the final terms. As such, drafting notes to aid the individual completing the final terms at the point of issuance should not be included in the final terms, nor should miscellaneous disclosure obligations be addressed in the final terms.

### What information from the base prospectus can I include in the final terms?

Where a base prospectus contains options with regard to the information required by the relevant securities note, the final terms shall determine which of the options is applicable to the individual issue by referring to the relevant sections of the base prospectus or by replicating such information (Art. 8(3) of the PR Regulation). This means that if the base prospectus contains different options that could be applicable to a security, then the final terms can include the relevant information from the base prospectus. The final terms should only contain information that relates to the securities and should not be used to supplement the base prospectus, nor should the final terms contradict the information included in the base prospectus.

### Do I have to include the formula for structured securities in the base prospectus?

Yes. The formulae can be presented algebraically in the base prospectus. The description contained within the base prospectus addressing how the return on a derivative security takes place and how the value of the investment is affected by the value of the underlying instrument needs to be clearly presented so that it is

understandable and comprehensible to an investor. For retail denominated securities the description should not be legalistic, or overly mathematical.

The final terms may then contain the formula with the issuance specific details inserted. The pay out formulae for derivative and structured securities in the prospectus will be subject to review by the FCA and new payment formulae should not be included in final terms. Additional features should not be added to the formulae via the final terms as this would constitute a new formula and would therefore need to be in a base prospectus or prospectus.

### What is the appropriate yield formula to include in a retail base prospectus?

The yield disclosure requirement for retail bonds is set out in the PR Regulation Annex 14 para 4.10. This provision requires a description of the method used to calculate the yield. We believe this requirement can be satisfied by including a simple a yield formula (i.e. current yield).

### Can notes exempt from the Prospectus Regulation (P Reg exempt notes) be issued from a base prospectus?

P Reg exempt notes can be issued from a document that includes a prospectus so long as it is clear that the P Reg exempt notes are not issued from the approved prospectus. This is consistent with ESMA Q&A 14.2, which states that a document should not be called a 'prospectus' if the document is not being used in the capacity of a prospectus (as defined by the P Reg), unless it clearly states that it is not a prospectus for the purposes of the P Reg.

**Retail investors:** To make the distinction clear to retail investors, P Reg exempt notes should be issued from a combined document containing a base prospectus and another document such as an offering memorandum. This combined document should ensure that all the information that is not part of the base prospectus is included in a single section within the document, which would be clearly marked as not forming part of the base prospectus and as not having been reviewed or approved by the FCA.

The combined document must contain final terms (for use with the base prospectus) and a pricing supplement (for use with the offering memorandum in relation to P Reg exempt notes). The pricing supplement should include language in prominent bold text to make it clear that it does not form part of the base prospectus approved by the FCA. We believe this language will ensure that retail investors are not misled and what is covered by the prospectus will be made clear to them.

**Wholesale investors:** We recognise that a wholesale investor will be more knowledgeable in investment matters. Accordingly, for wholesale documents, the base prospectus must include a clear statement that the P Reg exempt notes do not form part of the base prospectus approved by the FCA. The base prospectus should also

include a pricing supplement for use when issuing P Reg exempt notes. The pricing supplement should include language in prominent bold text to make it clear that it does not form part of the base prospectus approved by the FCA.

### **Do I include the issuance-specific summary in the base prospectus or in the final terms?**

Under the previous Prospectus Directive regime, the summary included in the base prospectus could have place holders that were intentionally left blank for the later insertion of issuance-specific information from the final terms at the time of issue. Under the Prospectus Regulation, ESMA Q&A 13.2 makes it clear that it is now not possible to include a pro-forma summary in a base prospectus.

If an issuance-specific summary is being included in a document, it should not be included as a separate section in the base prospectus. An issuance-specific summary (i.e. the summary relevant for the security being issued) should be attached to the final terms to form the summary specific to the securities being issued.

If a base prospectus has been approved for the issuance of both retail and wholesale securities, do the final terms have to include an issuance-specific summary?

Although PR Regulation Art. 25(3) contemplates that a single document can constitute multiple base prospectuses, the requirement for an issuance-specific summary depends on the nature of the base prospectus and the nature of the issuance(s).

If a single document comprises both a retail base prospectus and a wholesale base prospectus and it is clear which parts of the document comprise which base prospectus, then only the retail final terms will require an issuance-specific summary. Where a single document comprises both a retail base prospectus and wholesale base prospectus, and a retail issuance and a wholesale issuance is being made at the time of the document, it could contain an issuance-specific summary within the retail base prospectus for the retail issuance and an 'overview' specific to wholesale issuance within the wholesale base prospectus.

If the document does not comprise a retail base prospectus and a wholesale base prospectus but instead the document is one base prospectus approved for the issuance of both retail and wholesale securities, then if an issuance is being made at the time of the document, an issuance-specific summary can be included in the document for either or both retail and wholesale final terms depending on whether the issuance(s) are retail, wholesale or one (or more) of each.