

Rule 135e legend

Rule 135e provides a safe harbor for announcements, press releases and other press-related materials in connection with an offering structured pursuant to Regulation S. Inserting the legends below will have the effect of the press release *not* constituting general solicitation, general advertising or directed selling efforts.

The following legend should be inserted at the top of the press release in all-capital letters:

NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION IN
WHOLE OR IN PART IN OR INTO THE UNITED STATES, CANADA
OR JAPAN.

The following legend should be inserted at the end of the press release in addition to any legends or rubrics that might be required by local law or practice:

This announcement is not for publication or distribution, directly or indirectly, in or into the United States of America. This announcement is not an offer of securities for sale into the United States. The securities referred to herein have not been and will not be registered under the U.S. Securities Act of 1933, as amended, and may not be offered or sold in the United States, except pursuant to an applicable exemption from registration. No public offering of securities is being made in the United States.

The first legend should always include Canada, *unless* a Canadian lawyer has been consulted. There is a practice developing of including further jurisdictions, such as Australia, South Africa and New Zealand. There is *no* need to include New Zealand. There is also practice of including a sweep-up clause (such as “and any other jurisdiction where such activity would be unlawful”). You should *not* use a sweep-up clause: it is of *no* help to the person distributing the press release.

The second legend should be inserted in announcements or press releases as its own, stand-alone paragraph. It should *not* be combined with other legends.

In the case of an advertisement in a non-U.S. publication, such as the Financial Times, the first legend can be omitted.

Deed for Rule 144A(d)(4) compliance

This deed is made on [date] by [issuer], a company organized under the laws of [jurisdiction] (the *Company*), in favor of holders of the Company's [title of securities] (the *Securities*) and prospective holders of Securities.

Whereas, it is intended that certain Securities will be placed in the United States to qualified institutional buyers, as defined in Rule 144A under the U.S. Securities Act of 1933, as amended; now this deed witnesseth as follows.

1. The Company hereby gives the [representations and] covenant set out below:

[(a)] So long as any of the Securities are “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, and if for any reason, the Company is not exempt from the reporting requirements of Section 13 or 15(d) of the U.S. Securities Exchange Act of 1934, as amended, or the information furnishing requirements of Rule 12g3-2(b) thereunder and is not then subject to, and in compliance with, such reporting requirements under the Exchange Act, the Company undertakes to any holder of such restricted securities, or any prospective purchaser of such restricted securities designated by a holder, to provide to such holder or prospective purchaser upon the request of such holder or prospective purchaser, any information required to be provided by Rule 144A(d)(4) under the Securities Act.

[(b) The Company is not an “investment company” within the meaning of the U.S. Investment Company Act of 1940, as amended.

[(c) The Company is not a “passive foreign investment company” within the meaning of Section 1297 of the U.S. Internal Revenue Code of 1986.]

2. This deed (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this deed or its formation, including any non-contractual dispute) shall be governed by and construed in accordance with [English][Irish] law.

Note:

In the case of a secondary block trade, if the selling shareholder is providing investment company and PFIC representations in the block trade agreement, there is no need to repeat them in the deed. Similarly, in a primary offering, they would typically be contained in the underwriting agreement, not the deed. They can be included in the deed in the case of a secondary block trade, where the issuer is willing to provide them instead of the selling shareholder.

In witness whereof, this deed has been executed as a deed on the date stated above.

[NAME OF ISSUER]

By: _____

Name:
Title: Director

[NAME OF ISSUER]

By: _____

Name:
Title: [Director][Secretary]

Present when the common seal of
[Name of issuer] was affixed to this
deed and this deed was delivered:

Name:

Title: Director

Name:

Title: [Director][Secretary]

Note: Two forms of signature block are provided here. Choose the one appropriate to the circumstance.

GUIDELINES FOR PREPARING RULE 144A OFFERING DOCUMENTS

Available information

Rule 144A requires the provision of ongoing information to investors. There typically is a paragraph confirming the issuer's compliance with the requirements. The following is a sample paragraph:

For so long as any of our [*securities*] are restricted securities, as defined in Rule 144(a)(3) under the U.S. Securities Act of 1933, as amended, we will, during any period in which we are neither subject to Section 13 or 15(d) of the Exchange Act of 1934, as amended, nor exempt from reporting under the Exchange Act pursuant to Rule 12g3-2(b) thereunder, make available to any holder or beneficial owner of such restricted securities or to any prospective purchaser of such restricted securities designated by such holder or beneficial owner, upon the request of such holder, beneficial owner or prospective purchaser, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act. [*We expect to be exempt from reporting under the Exchange Act pursuant to Rule 12g3-2(b).*]

The commitment to provide ongoing information need only apply to holders, beneficial owners and prospective purchasers of the Securities being offered; however, in the case of equity offerings, the preferred approach is to apply the provision to *all* shares of the same class.

This provision is also typically included in offering documents for Section 4(1½) and Section 4(2) offerings so that investors can resell pursuant to Rule 144A.

Commission legend

Item 501 of Rule S-K requires a legend that indicates that neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or passed upon the accuracy or adequacy of the disclosure in the prospectus and that any contrary representation is a criminal offense. The item contains two examples:

Example A: Neither the Securities and Exchange Commission nor any State securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

Example B: Neither the Securities and Exchange Commission nor any State securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Item 501 only applies to prospectuses in registered offerings. It does not apply to Rule 144A offerings or to Section 4(1½) or Section 4(2) offerings. There is a practice of including the commission legend in the inside cover of Rule 144A, Section 4(1½) and Section 4(2) offering

documents. There is *no* need to include the commission legend in a press release or on the front cover of an offering document.

Enforceability of civil liabilities

It is typical to include a warning to U.S. investors that they might not be able to enforce U.S. judgements against the issuer. These are fairly standardized warnings for many jurisdictions. See Exhibit I for examples. The following warning is generic and can be used if a local warning is not available.

The enforcement by investors of civil liabilities under the U.S. federal securities laws may be affected adversely by the following:

- We are organized under the laws of [*jurisdiction*].
- Our directors and officers may be residents of jurisdictions outside the United States.
- All or a substantial portion of our assets may be located outside the United States.

Exchange rates

Form 20-F no longer requires exchange rate information.

Forward-looking statements

There is a practice of including a cautionary statement about forward-looking information. This is based on Section 27A of the U.S. Securities Act of 1933, as amended. Section 27A by its terms does *not* apply to issuers that are not registered with the SEC and does not apply to IPOs.

Gustafson

Do not use the word *prospectus*.

New Hampshire legend

Effective January 1, 2016, the New Hampshire legend is no longer required.

Plain English

Write in plain English as much as possible. Even if first-person construction is not used, plain English principles should be used. This includes the following:

- no passive construction
- minimal use of defined terms
- no embedded list
- left justification.

Risk factors

Risk factors should be written in as plain English as possible. Headings should consist of full sentences. There should be *no* mitigating language. The risk factor section should be placed ahead of the business description.

Rule 144A(d)(2) notice

The rule mandates a notice to investors. In the case of a Rule 144A transaction with an offering document, the notice should be placed on the front cover. The following format should be used.

The [securities] [ordinary shares] [notes] have not been, and will not be, registered under the U.S. Securities Act of 1933, as amended. Prospective purchasers that are qualified institutional buyers are hereby notified that the sellers of the [securities] [ordinary shares] [notes] may be relying on the exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A under the Securities Act. The [securities] [ordinary shares] [notes] are being offered outside the United States in reliance on Regulation S under the Securities Act.

The notice is sometimes included in Section 4(1½) and Section 4(2) offering documents.

Transfer restrictions

There is typically a section that explains transfer restrictions applicable to QIBs. These restrictions are typically presented as deemed representations from the QIBs. This section should be separate from selling restrictions and should be relatively easy to find. There is *no* need to include transfer restrictions for purchases outside the United States. The transfer restrictions section is also included in Section 4(1½) and Section 4(2) offering documents.

The following is an example of transfer restrictions:

Each purchaser of our securities in the United States will be deemed to have represented and agreed as follows:

- (i) The purchaser (a) is a qualified institutional buyer, or QIB, as defined in Rule 144A, or a broker-dealer acting for the account of a QIB, (b) is acquiring the securities for its own account or for the account of a QIB, and (c) is aware that the securities are restricted within the meaning of the U.S. Securities Act of 1933, as amended, and may not be deposited into any unrestricted depository facility, unless at the time of such deposit the securities are no longer restricted.
- (ii) The purchaser is aware that such securities have not been and will not be registered under the U.S. Securities Act of 1933, as amended and are being offered in the United States only to QIBs in a transaction not involving any public offering in the United States within the meaning of the Securities Act.

- (iii) The purchaser understands and agrees that the securities may not be offered, sold, pledged or otherwise transferred, except (a) to a person that the seller and any person acting on its behalf reasonably believe is a QIB purchasing for its own account or for the account of another QIB *or* (b) outside the United States in accordance with Regulation S under the U.S. Securities Act of 1933, as amended, *or* (c) pursuant to an exemption from registration under the Securities Act *or* (d) pursuant to an effective registration statement under the Securities Act.

U.S. taxation

Form 20-F requires a section that explains tax consequences to U.S. taxpayers of holding the securities. This is usually tailored for each transaction, so there is no template. The initial focus of the U.S. tax lawyers will typically be determining the company's PFIC status.

United States

There is *no* need to define the United States in an offering document or in a legend. If somebody insists on a definition, use the definition in Rule 902(*l*). There should be no other definition of the United States.

United States means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

Again, there is *no* need to define the United States. There is a version of the definition in circulation that is too broad.

Vocabulary

If practical, use American English and American spelling. At a minimum, write *percent* (instead of per cent.), do not use the word *scheme*, do not split infinitives.

Wraps

The U.S. disclosure can be integrated into the offering document or can be contained in a U.S. wrap. Exhibit II contains an example of a U.S. wrap written in plain English. Exhibit III contains an example of a U.S. wrap that is not written in first person.

Enforcement of civil liabilities

The following is an example for a *Belgian* company:

We are a Belgian company organized with limited liability. Our registered offices and the majority of our assets are located outside of the United States. In addition, the majority of our directors and senior management and the experts named herein are residents of jurisdictions other than the United States. As a result, it may not be possible for you to effect service of process within the United States upon these individuals or our company, to enforce judgments obtained in U.S. courts against these individuals or our company in courts outside the United States, or to enforce against these individuals and our company, whether in original actions or in actions for the enforcement of judgments of U.S. courts, civil liabilities based solely upon U.S. federal or state securities laws.

The United States currently does not have a treaty with Belgium providing for the reciprocal recognition and enforcement of judgments, other than arbitral awards, in civil and commercial matters. Consequently, a final judgment rendered by any federal or state court in the United States, whether or not predicated solely upon U.S. federal or state securities laws, would not automatically be enforceable in Belgium. Actions for the enforcement of judgments of U.S. courts are regulated by Articles 22 to 25 of the 2004 Belgian Code of Private International Law. Recognition or enforcement does not imply a review of the merits of the case and is irrespective of any reciprocity requirement. A U.S. judgment will, however, not be recognized or declared enforceable in Belgium, unless (in addition to compliance with certain technical provisions) the Belgian courts are satisfied of the following:

- The effect of the recognition or enforcement of judgment is not manifestly incompatible with (Belgian) public order.
- The judgment did not violate the rights of the defendant.
- The judgment was not rendered in a matter where the parties did not freely dispose of their rights, with the sole purpose of avoiding the application of the law applicable according to Belgian international law.
- The judgment is not subject to further recourse under U.S. law.
- The judgment is not incompatible with a judgment rendered in Belgium or with a prior judgment rendered abroad that might be enforced in Belgium.
- The claim was not filed outside Belgium after a claim was filed in Belgium, if the claim filed in Belgium relates to the same parties and the same purpose and is still pending.

- The Belgian courts did not have exclusive jurisdiction to rule on the matter.
- The U.S. court did not accept its jurisdiction solely on the basis of either the presence of the plaintiff or the location of the disputed goods in the United States.
- The judgment did not concern the deposit or validity of intellectual property rights when the deposit or registration of those intellectual property rights was requested, done or should have been done in Belgium pursuant to international treaties.
- The judgment did not relate to the validity, operation, dissolution, or liquidation of a legal entity that has its main seat in Belgium at the time of the petition of the U.S. court.
- If the judgment relates to the opening, progress or closure of insolvency proceedings, it is rendered on the basis of the European Insolvency Regulation (EC Regulation No. 1346/2000 of May 29, 2000) or, if not, that (a) a decision in the principal proceedings is taken by a judge in the state where the most important establishment of the debtor was located or (b) a decision in territorial proceedings was taken by a judge in the state where the debtor had another establishment than its most important establishment.
- The judgment submitted to the Belgian court is authentic.

In addition, with regard to the enforcement by legal proceedings of any claim (including the exequatur of foreign court decisions in Belgium), a registration tax of 3% (to be calculated on the total amount that a debtor is ordered to pay) is due, if the sum of money that the debtor is ordered to pay by a Belgian court judgment, or by a foreign court judgment that is either (i) automatically enforceable and registered in Belgium or (ii) rendered enforceable by a Belgian court, exceeds 12,500 euros. The debtor and the creditor are jointly liable for the payment of the registration tax; however, the liability of the creditor is limited up to a maximum amount of half of the amount recovered from the debtor. An exemption from such registration tax applies in respect of exequaturs of judgments rendered by courts of states that are bound by European Regulation 44/2001.

The following is an example for an *English* company:

We are organized as a public limited company incorporated under the laws of England and Wales. **[None of our directors or officers are citizens or residents of the United States.]** In addition, the majority of our assets and all the assets of our directors and officers are located outside the United States. As a result, it may not be possible for U.S. investors to effect service of process within the United States upon us or our directors and officers located outside the United States or to enforce in the U.S. courts or outside

the United States judgments obtained against them in U.S. courts or in courts outside the United States, including judgments predicated upon the civil liability provisions of the U.S. federal securities laws or the securities laws of any state or territory within the United States. There is doubt as to the enforceability in England and Wales, whether by original actions or by seeking to enforce judgments of U.S. courts, of claims based on the federal securities laws of the United States. In addition, punitive damages in actions brought in the United States or elsewhere may be unenforceable in England and Wales.

The following is an example for a *German* company:

We are a stock corporation organized under the laws of the Federal Republic of Germany, and our assets are primarily located outside the United States. In addition, the members of our supervisory board (*Aufsichtsrat*) and management board (*Vorstand*) are not residents of the United States. Their assets are primarily located outside the United States. As a result, it may not be possible for investors to effect service of process within the United States upon us or the members of our supervising board and management board or to enforce against us or them judgments of courts of the United States, whether predicated upon the civil liability provisions of the federal securities laws of the United States or other laws of the United States or any state thereof.

The United States and Germany do not currently have a treaty providing for reciprocal recognition and enforcement of judgments in civil and commercial matters. Therefore, a final judgment for payment of money rendered by a federal or state court in the United States based on civil liability, whether or not predicated solely upon U.S. federal securities laws, may not be enforceable, either in whole or in part, in Germany. However, if the party in whose favor such final judgment is rendered brings a new suit in a competent court in Germany, such party may submit to the German court the final judgment rendered in the United States. Under such circumstances, a judgment by a federal or state court of the United States against us or such persons will be regarded by a German court only as evidence of the outcome of the dispute to which such judgment relates, and the court may choose to rehear the dispute. In addition, awards of punitive damages in actions brought in the United States or elsewhere are unenforceable in Germany.

The following is an example for a *Netherlands* company:

The ability of certain persons in jurisdictions other than the Netherlands, in particular the United States, to bring an action against the Company may be limited under applicable laws and regulations. At the date of this document, the Company is incorporated under Dutch law and **[all]** the managing directors, the supervisory directors and **[all]** the Group's employees are citizens or residents of countries other than the United States. **[All]** the assets of such persons and all of the assets of the Group are located outside the United States. As a result, it may be impossible or difficult for investors to effect service of process within the

United States upon such persons or the Company or to enforce against them in U.S. courts a judgment obtained in such courts. In addition, in the Netherlands, there is doubt as to the enforceability of original actions or actions for enforcement based solely on the federal or state securities laws of the United States or judgments of U.S. courts, including judgments based on the civil liability provisions of the U.S. federal or state securities laws.

As at the date of this document, the United States and the Netherlands do *not* have a treaty providing for the reciprocal recognition and enforcement of judgments, other than arbitration awards, in civil and commercial matters. Consequently, a judgment rendered by a court in the United States, whether or not predicated solely upon U.S. securities law, will *not* automatically be recognized and enforced by Dutch courts. However, if a person has obtained a final judgment without possibility of appeal rendered by a court in the United States that is enforceable in the United States and files a claim with the competent Dutch court, the Dutch court will generally recognize and give effect to such foreign judgment without substantive re-examination or re-litigation on the merits insofar as it finds the following:

- The jurisdiction of the U.S. court has been based on a ground of jurisdiction that is generally acceptable according to international standards.
- The judgment by the U.S. court was rendered in legal proceedings that comply with the Dutch standards of the proper administration of justice including sufficient safeguards (*behoorlijke rechtspleging*).
- The judgment by the U.S. court does not contravene Dutch public policy (*openbare orde*).
- The judgment by the U.S. court is not irreconcilable with a judgment of a Dutch court or an earlier judgment of a foreign court between the same parties that is capable of being recognized in the Netherlands.

Even if such foreign judgment is given binding effect, a claim based thereon may, however, still be rejected if the foreign judgment is not or no longer formally enforceable in the country of origin.

Enforcement of any foreign judgment in the Netherlands will be subject to the rules of Dutch civil procedure (*Wetboek van Burgerlijke Rechtsvordering*). Judgments may be rendered in a foreign currency, but enforcement is executed in euros at the applicable rate of exchange. Under certain circumstances, a Dutch court has the power to stay proceedings (*aanhouden*) or to declare that it has no jurisdiction if concurrent proceedings are being brought elsewhere.

A Dutch court may reduce the amount of damages granted by a U.S. court and recognize damages only to the extent that they are necessary to compensate actual losses.

Standard-form U.S. wrap (in plain English)**U.S. OFFERING MEMORANDUM DATED [___], 201[]**

This offering memorandum is confidential. We have prepared this offering memorandum solely for use in connection with the proposed offering of the securities described herein. It is personal to you and does not constitute an offer to any other person or to the public generally. You are authorized to use this offering memorandum solely for the purpose of considering the purchase the securities described herein. Distribution to any person other than a prospective investor and any person retained to advise such prospective investor with respect to its purchase is unauthorized, and any disclosure of any of the contents of this offering memorandum, without prior written consent, is prohibited.

Investing in our securities involves risks. See “Risk Factors” beginning on page [___].¹

The securities described herein have not been and will not be registered under the U.S. Securities Act of 1933, as amended. Prospective purchasers that are qualified institutional buyers are hereby notified that the sellers of the securities may be relying on an exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A. Outside the United States, the offering is being made in reliance on Regulation S under the Securities Act.

NOTICE TO PROSPECTIVE INVESTORS IN THE UNITED STATES

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this document is truthful or complete. Any representation to the contrary is a criminal offense.

The securities have not been and will not be registered under the U.S. Securities Act of 1933, as amended. The securities are subject to restrictions on transferability and resale and may not be transferred or resold, except as permitted under the Securities Act pursuant to registration or an exemption therefrom.

AVAILABLE INFORMATION

For so long as any of our securities are “restricted securities” within the meaning of Rule 144(a)(3) under the U.S. Securities Act of 1933, as amended, we will, during any period in which we are not subject to Section 13 or 15(d) under the U.S. Securities Exchange Act of 1934, as amended, nor exempt from reporting under the Exchange Act pursuant to Rule 12g3-2(b) thereunder, make available to any holder or beneficial owner of such restricted securities, or to any prospective purchaser of such restricted securities designated by such holder or beneficial owner, upon request the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

ENFORCEABILITY OF CIVIL LIABILITIES

The enforcement by investors of civil liabilities under the U.S. federal securities laws may be affected adversely by the following:

¹ This sentence should be bold and in twelve-point type.

- We are organized under the laws of **[jurisdiction]**.
- Our directors and officers may be residents of jurisdictions outside the United States.
- All or a substantial portion of our assets may be located outside the United States.

TRANSFER RESTRICTIONS

Each purchaser of our securities in the United States will be deemed to have represented and agreed as follows:

- (i) The purchaser (a) is a qualified institutional buyer, or QIB, as defined in Rule 144A under the U.S. Securities Act of 1933, as amended, or a broker-dealer acting for the account of a QIB, (b) is acquiring such securities for its own account or for the account of a QIB, and (c) is aware that the securities are restricted within the meaning of the Securities Act and may not be deposited into any unrestricted depository facility, unless at the time of such deposit the securities are no longer restricted.
- (ii) The purchaser is aware that our securities have not been and will not be registered under the U.S. Securities Act 1933, as amended, and are being offered in the United States only to QIBs in a transaction not involving any public offering in the United States within the meaning of the Securities Act.
- (iii) The purchaser understands and agrees that our securities may not be offered, sold, pledged or otherwise transferred, except (a) to a person that the seller and any person acting on its behalf reasonably believe is a QIB purchasing for its own account or for the account of another QIB *or* (b) outside the United States in accordance with Regulation S under the U.S. Securities Act 1933, as amended, *or* (c) pursuant to an exemption from registration under the Securities Act *or* (d) pursuant to an effective registration statement under the Securities Act.

FORWARD-LOOKING STATEMENTS

[If the underlying offering document does not contain a forward-looking legend, consider whether to include one in the wrap.]

U.S. TAXATION

[Consider whether U.S. tax disclosure is appropriate. Most offering documents for Rule 144A transactions have U.S. tax disclosure. Most offering documents for Section 4(a)(2) transactions do not.]

ERISA

[Consider whether ERISA disclosure is appropriate. As a general matter, ERISA concerns for equity securities will only apply in the case of funds, ETFs, investment companies and REITs.]

Standard-form U.S. wrap (not first person)

U.S. OFFERING MEMORANDUM DATED [___], 201 []

This offering memorandum is confidential. This offering memorandum has been prepared solely for use in connection with the proposed offering of the securities described herein. It is personal to the recipient and does not constitute an offer to any other person or to the public generally. The recipient is authorized to use this offering memorandum solely for the purpose of considering the purchase the securities described herein. Distribution to any person other than a prospective investor and any person retained to advise such prospective investor with respect to its purchase is unauthorized, and any disclosure of any of the contents of this offering memorandum, without prior written consent, is prohibited.

Investing in our securities involves risks. See “Risk Factors” beginning on page [___].²

The securities described herein have not been and will not be registered under the U.S. Securities Act of 1933, as amended. Prospective purchasers that are qualified institutional buyers are hereby notified that the sellers of the securities may be relying on an exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A. Outside the United States, the offering is being made in reliance on Regulation S under the Securities Act.

NOTICE TO PROSPECTIVE INVESTORS IN THE UNITED STATES

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this document is truthful or complete. Any representation to the contrary is a criminal offense.

The securities have not been and will not be registered under the U.S. Securities Act of 1933, as amended. The securities are subject to restrictions on transferability and resale and may not be transferred or resold, except as permitted under the Securities Act pursuant to registration or an exemption therefrom.

AVAILABLE INFORMATION

For so long as any of the Company’s securities are “restricted securities” within the meaning of Rule 144(a)(3) under the U.S. Securities Act of 1933, as amended, the Company will, during any period in which it is not subject to Section 13 or 15(d) under the U.S. Securities Exchange Act of 1934, as amended, nor exempt from reporting under the Exchange Act pursuant to Rule 12g3-2(b) thereunder, make available to any holder or beneficial owner of such restricted securities, or to any prospective purchaser of such restricted securities designated by such holder or beneficial owner, upon request the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

ENFORCEABILITY OF CIVIL LIABILITIES

The enforcement by investors of civil liabilities under the U.S. federal securities laws may be affected adversely by the following:

² This sentence should be bold and in twelve-point type.

- The Company is organized under the laws of **[jurisdiction]**.
- The Company's directors and officers may be residents of jurisdictions outside the United States.
- All or a substantial portion of the Company's assets may be located outside the United States.

TRANSFER RESTRICTIONS

Each purchaser of the securities in the United States will be deemed to have represented and agreed as follows:

- (iv) The purchaser (a) is a qualified institutional buyer, or QIB, as defined in Rule 144A under the U.S. Securities Act of 1933, as amended, or a broker-dealer acting for the account of a QIB, (b) is acquiring such securities for its own account or for the account of a QIB, and (c) is aware that the securities are restricted within the meaning of the Securities Act and may not be deposited into any unrestricted depository facility, unless at the time of such deposit the securities are no longer restricted.
- (v) The purchaser is aware that the securities have not been and will not be registered under the U.S. Securities Act of 1933, as amended, and are being offered in the United States only to QIBs in a transaction not involving any public offering in the United States within the meaning of the Securities Act.
- (vi) The purchaser understands and agrees that the securities may not be offered, sold, pledged or otherwise transferred, except (a) to a person that the seller and any person acting on its behalf reasonably believe is a QIB purchasing for its own account or for the account of another QIB *or* (b) outside the United States in accordance with Regulation S under the U.S. Securities Act of 1933, as amended, *or* (c) pursuant to an exemption from registration under the Securities Act, *or* (d) pursuant to an effective registration statement under the Securities Act.

FORWARD-LOOKING STATEMENTS

[If the underlying offering document does not contain a forward-looking legend, consider whether to include one in the wrap.]

U.S. TAXATION

[Consider whether U.S. tax disclosure is appropriate. Most offering documents for Rule 144A transactions have U.S. tax disclosure. Most offering documents for Section 4(a)(2) transactions do not.]

ERISA

[Consider whether ERISA disclosure is appropriate. As a general matter, ERISA concerns for equity securities will only apply in the case of funds, ETFs, investment companies and REITs.]

PROVISIONS FOR RULE 144A UNDERWRITING AND PLACING AGREEMENTS

Preamble/recitals

The [securities being offered] will be [sold] [resold] by the [initial purchasers] [managers] [underwriters] outside the United States pursuant to Regulation S and in the United States to investors reasonably believed to be qualified institutional buyers, as defined in Rule 144A under the U.S. Securities Act of 1933, as amended.

Representations from the [issuer] [company]***Rule 10b-5 representation***

The [preliminary offering document], at the date thereof, did not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. On the closing date and on [any settlement date], the [final offering document] did not and will not (and any amendment or supplement thereto, at the date thereof, at the closing date and on [any settlement date], will not) contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that the [issuer] [company] makes no representation or warranty as to the information contained in or omitted from the [preliminary offering document] or the [final offering document], or any amendment or supplement thereto, in reliance upon and in conformity with information furnished in writing to the [issuer] [company] by or on behalf of the [initial purchasers] [managers] [underwriters] specifically for inclusion therein.¹

Directed selling efforts

See Annex I.

General solicitation

See Annex II.

Investment company

The [issuer] [company] is not, and after giving effect to the offering and sale of the [securities being offered] and the application of the proceeds thereof, will not be, an "investment company" as defined in the U.S. Investment Company Act of 1940, as amended, without taking account of any exemption arising out of the number of holders of the [issuer's] [company's] securities.²

Foreign issuer

The [issuer] [company] is a "foreign issuer" (as defined in Regulation S).³

¹ This representation is appropriate if an offering document is used for sales in the United States. It is *not* appropriate to apply this representation to announcements or press releases.

² If the offering is secondary only (meaning that no new shares are being issued), the following phrase can be removed: "and the application of the proceeds thereof."

³ This representation is customary in agreements for marketed offerings. In many cases, it is obvious whether the issuer is a foreign issuer, so the representation is not requested.

SUSMI

The [issuer] [company] reasonably believes that there is no substantial U.S. market interest (as defined in Regulation S) in its [class of securities if equity securities are being offered][debt securities].⁴

Eligibility/Fungibility

See Annex III.

Distribution participants

The [issuer] [company] has not paid or agreed to pay to any person any compensation for soliciting another to purchase any securities of the [issuer] [company] (except as contemplated in this agreement).

No integration

None of the [issuer] [company], its affiliates, or any person acting on its or their behalf has, directly or indirectly, made offers or sales of any security, or solicited offers to buy, any security under circumstances that would require the registration of the [securities being offered] under the U.S. Securities Act of 1933, as amended.⁵

No registration

No registration under the U.S. Securities Act of 1933, as amended, of the [securities being offered] is required for the offer and sale of the [securities being offered] in the manner contemplated herein.⁶

⁴ This representation is customary in agreements for marketed offerings. In many cases, it is obvious whether the issuer has SUSMI, so the representation is not requested.

⁵ This representation should never be asked of a selling shareholder.

⁶ This representation calls for a legal conclusion. Lawyers to the issuer will sometimes object on that basis. It can be removed if a no registration opinion is being provided.

Representations from the selling shareholder

Selling shareholders should represent as to general solicitation and directed selling efforts. Otherwise, they should not be asked to represent as to U.S. securities matters that are the subject of representations from the issuer.

Directed selling efforts

See Annex I.

General solicitation

See Annex II.

Investment company

The [issuer] [company] is not an “investment company”, as defined in the U.S. Investment Company Act of 1940, as amended, without taking account of any exemption arising out of the number of holders of the [issuer’s] [company’s] securities.⁷

Eligibility/Fungibility

See Annex III.

Ongoing information

[The [company][issuer] is a reporting under Section 13 or Section 15(d) of the U.S. Securities Exchange Act of 1934, as amended.]

[The [company][issuer] is exempt from the reporting requirements of the U.S. Securities Exchange Act of 1934, as amended, by virtue of the exemption afforded by Rule 12g3-2(b) thereunder.]

[The [company][issuer] has undertaken to provide to any holder of [class of securities][securities being offered], requesting for itself or on behalf of a prospective investor, the information to be provided pursuant to Rule 144A(d)(4) under the Securities Act.]⁸

⁷ If the issuer is a party to the agreement, it should give the representation, and there would be *no* need to also ask the selling shareholder. This formulation is appropriate for a secondary transaction, when the issuer is *not* a party to the agreement.

⁸ This representation is only applicable in Rule 144A *secondary* offerings. In Rule 144A *primary* offerings, the issuer typically provides the relevant covenant, so there is no need for anything from the selling shareholder.

Representations from the [initial purchasers] [managers] [underwriters]

Manner of distribution

It has not offered or sold, and will not offer or sell, any **[securities being offered]** within the United States as part of its distribution at any time, except as follows: (i) to those it reasonably believes to be “qualified institutional buyers” (as defined in Rule 144A under the U.S. Securities Act of 1933, as amended) *or* (ii) in accordance with Rule 903 of Regulation S.

General solicitation

None of it, any of its affiliates or any person acting on its behalf has made, or will make, offers or sales of the **[securities being offered]** by means of any form of general solicitation or general advertising (within the meaning of Regulation D under the U.S. Securities Act of 1933, amended).

Directed selling efforts

None of it, any of its affiliates or any person acting on its or their behalf has engaged, or will engage, in any directed selling efforts (as defined in Regulation S under the U.S. Securities Act of 1933, as amended) with respect to the **[securities being offered]**.

Notifications

In connection with each sale to a qualified institutional buyer, it has taken or will take reasonable steps to ensure that the purchaser of **[securities being offered]** is aware that such sale may be being made pursuant to Rule 144A under the U.S. Securities Act of 1933, as amended.⁹

Distribution participants

It has not entered and will not enter into any contractual arrangement with any distributor (within the meaning of Regulation S) with respect to the distribution of the **[securities being offered]**, except with its affiliates or with the prior written consent of the Company.

Accredited investor

It is an “accredited investor” (as defined in Rule 501(a) of Regulation D under the U.S. Securities Act of 1933, as amended).¹⁰

Agreements/covenants/undertakings of the issuer/company

General solicitation

None of the **[issuer] [company]**, its affiliates, or any person acting on its or their behalf will engage in any form of general solicitation or general advertising (within the meaning of Regulation D under the U.S. Securities Act of 1933, as amended) in connection with any offer or sale of the **[securities being offered]** in the United States.

⁹ In order to comply with Rule 144A, Rule 144A(d)(2) notices must be provided to investors. This only applies in Rule 144A transactions. This is not a common representation in block trade agreements.

¹⁰ This is a common representation in IPO underwriting agreements for Rule 144A transactions. It is not needed, but there is no reason to object.

Directed selling efforts

None of the [issuer] [company], its affiliates, or any person acting on its or their behalf will engage in any directed selling efforts (as defined in Regulation S under the U.S. Securities Act of 1933, as amended) with respect to the [securities being offered].

Seasoning

The [issuer] [company] will not, and will not permit any of its affiliates to, resell (other than pursuant to Regulation S under the U.S. Securities Act of 1933, as amended) any [securities being offered] that have been acquired by any of them.¹¹

No integration

None of the [issuer] [company], its affiliates, or any person acting on its or their behalf will, directly or indirectly, make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of the [securities being offered] under the U.S. Securities Act of 1933, as amended.

Ongoing information

The ongoing information covenant is needed for primary offerings structured pursuant to Rule 144A. It is frequently included in primary offerings structured pursuant to Section 4(2) to QIBs.

[The [company][issuer] [agrees to use its best efforts to obtain] [has obtained] and, for so long as any of the [class of securities] [securities being offered] are outstanding and are “restricted securities” within the meaning of Rule 144(a)(3) under the U.S. Securities Act of 1933, as amended, shall use its best efforts to maintain an exemption from the registration requirements of Section 12 of the U.S. Securities Exchange Act of 1934, as amended, pursuant to Rule 12g3-2(b) thereunder.]

[The [company][issuer] is subject to, and complies with, Section 13 or 15(d) of the U.S. Securities Exchange Act of 1934, as amended.]

During any period in which the [issuer] [company] is not subject to, and in compliance with, Section 13 or 15(d) of the U.S. Securities Exchange Act of 1934, as amended, or it is not exempt from such reporting requirements pursuant to, and in compliance with, Rule 12g3-2(b) under the U.S. Securities Exchange Act of 1934, as amended, it will provide to each holder of [class of securities] [securities being offered] that are restricted securities and to each prospective purchaser (as designated by such holder) of [class of securities] [securities being offered] that are restricted securities, upon the request of such holder or prospective purchaser, any information required to be provided by Rule 144A(d)(4) under the U.S. Securities Act of 1933, as amended. This covenant is intended to be for the benefit of

¹¹ The seasoning covenant is tied to the definition of restricted securities in Rule 144 (not Rule 144A). Securities sold by an issuer or its affiliates are restricted for one year, if they are sold in private transactions, such as those structured pursuant to Rule 144A or Section 4(2). The purpose of this provision is to avoid or minimize overlapping restricted periods, so that the securities being offered can become unrestricted at the same time. This provision can be meaningful in the case of debt securities or depositary receipts. Its utility is not obvious in the case of common stock or ordinary shares. This provision is *not* applicable to registered offerings or Regulation S offerings.

the holders, and the prospective purchasers designated by such holders, from time to time of restricted securities.¹²

Agreement/covenant/undertaking of the selling shareholder

None of it, its affiliates, or any person acting on its or their behalf will engage in any general solicitation or general advertising or directed selling efforts with respect to the [securities being offered].

Contribution

There is doubt as to the enforceability of a disclosure indemnity in a New York law-governed underwriting agreement. For New York law-governed underwriting agreements, it is customary to include a contribution clause in addition to the indemnity provision. Although, there is no obvious need; a contribution clause is frequently included in underwriting agreements governed by other laws. The contribution clause only makes sense if there is an offering document. There is no justification for including a contribution clause in an English law-governed placing agreement for a primary, undocumented offering.

¹² This provision is written with the intention of providing third-party rights to holders and prospective purchasers. If the governing law of the agreement does not recognize third-party rights, this provision should be reconsidered. This provision need only cover the securities being offered; however, in equity offerings, it is preferable for it to cover the entire class of shares so that it will be easier to structure future offerings pursuant to Rule 144A.

Directed selling efforts

A representation as to directed selling efforts is required in the case of a Regulation S offering. If there is a selling shareholder, it must give the representation. The form of the representation typically tracks the language in the regulation. A covenant on directed selling efforts is also required. In order to provide a no registration opinion, the U.S. lawyer will need to know that the issuer or selling shareholder has not engaged in directed selling efforts and does not intend to engage in directed selling efforts. In IPO underwriting agreements, the representation and the covenant are typically separate. In block trade agreements, the representation and covenant are typically combined. Furthermore, directed selling efforts and general solicitation are often covered in the same provision.

Option I: Representation as to directed selling efforts

None of it, its affiliates or any person acting on its or their behalf has engaged in any directed selling efforts (as defined in Regulation S under the Securities Act of 1933, as amended) with respect to the **[securities being offered]**.

Option II: Representation as to general solicitation and directed selling efforts

None of it, its affiliates or any person acting on its or their behalf has engaged in (i) any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act of 1933, as amended) in connection with any offer or sale of the **[securities being offered]** or (ii) any directed selling efforts (as defined in Regulation S under the Securities Act of 1933, as amended) with respect to the **[securities being offered]**.

Option III: Combined representation and covenant as to directed selling efforts

None of it, its affiliates or any person acting on its or their behalf has engaged or will engage in any directed selling efforts (as defined in Regulation S under the Securities Act of 1933, as amended) with respect to the **[securities being offered]**.

Option IV: Combined representation and covenant as to general solicitation and directed selling efforts

None of it, its affiliates or any person acting on its or their behalf has engaged or will engage in (i) any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act of 1933, as amended) in connection with any offer or sale of the **[securities being offered]** or (ii) any directed selling efforts (as defined in Regulation S under the Securities Act of 1933, as amended) with respect to the **[securities being offered]**.

General solicitation***Option I: Representation as to general solicitation***

None of it, its affiliates or any person acting on its or their behalf has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act of 1933, as amended) in connection with any offer or sale of the **[securities being offered]**.

Option II: Representation as to general solicitation and directed selling efforts

None of it, its affiliates or any person acting on its or their behalf has engaged in (i) any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act of 1933, as amended) in connection with any offer or sale of the **[securities being offered]** or (ii) any directed selling efforts (as defined in Regulation S under the Securities Act of 1933, as amended) with respect to the **[securities being offered]**.

Option III: Combined representation and covenant as to general solicitation

None of it, its affiliates or any person acting on its or their behalf has engaged or will engage in any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act of 1933, as amended) in connection with any offer or sale of the **[securities being offered]**.

Option IV: Combined representation and covenant as to general solicitation and directed selling efforts

None of it, its affiliates or any person acting on its or their behalf has engaged or will engage in (i) any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act of 1933, as amended) in connection with any offer or sale of the **[securities being offered]** or (ii) any directed selling efforts (as defined in Regulation S under the Securities Act of 1933, as amended) with respect to the **[securities being offered]**.

Eligibility/fungibility

Rule 144A(d) sets out the conditions to qualify for the Rule 144A exemption from registration. They include the following conditions:

- *The securities to be sold in the offering must not have been, WHEN ISSUED, of the same class as shares listed on an exchange in the United States. See paragraph (d)(3)(i) of Rule 144A.*
- *The securities to be sold in the offering may not be securities of an open-ended investment company, unit investment trust or face-amount-certificate company that is, or is required to be, registered under the U.S. Investment Company Act of 1934, as amended. See paragraph (d)(3)(ii).*

Option I: Simple eligibility representation

The [securities being offered] satisfy the eligibility requirements of Rule 144A(d)(3) under the U.S. Securities Act of 1933, as amended.

Option II: Fungibility specified in representation (issuer)

The [securities being offered] are not of the same class (within the meaning of Rule 144A) as any securities listed on a national securities exchange registered under Section 6 of the U.S. Securities Exchange Act of 1934, as amended, or quoted in a U.S. automated inter-dealer quotation system and otherwise satisfy the eligibility requirements of Rule 144A(d)(3) under the U.S. Securities Act of 1933, as amended.

Option III: Fungibility specified in representation (selling shareholder)

The [securities being offered] when issued were not of the same class (within the meaning of Rule 144A) as any securities then listed on a national securities exchange registered under Section 6 of the U.S. Securities Exchange Act of 1934, as amended, or quoted in a U.S. automated inter-dealer quotation system and otherwise satisfy the eligibility requirements of Rule 144A(d)(3) under the U.S. Securities Act of 1933, as amended.

Option IV: Both limbs of Rule 144A(d)(3) specified in representation (issuer)

The [securities being offered] are not of the same class (within the meaning of Rule 144A) as any securities listed on a national securities exchange registered under Section 6 of the U.S. Securities Exchange Act of 1934, as amended, or quoted in a U.S. automated inter-dealer quotation system and are not securities of an open-end investment company, unit investment trust or face-amount certificate company that is required to be registered under Section 8 of the U.S. Investment Company Act of 1940, as amended.

Option V: Both limbs of Rule 144A(d)(3) specified in representation (selling shareholder)

The [securities being offered] when issued were not of the same class (within the meaning of Rule 144A) as any securities then listed on a national securities exchange registered under Section 6 of the U.S. Securities Exchange Act of 1934, as amended, or quoted in a U.S. automated inter-dealer quotation system and are not securities of an open-end investment company, unit investment trust or face-amount certificate company that is required to be registered under Section 8 of the U.S. Investment Company Act of 1940, as amended.