



MiFID II – Primary New Issue Impact FactSheet

Background

As of 3 January 2018, BNP Paribas is subject to the provisions of Directive 2014/65/EU (“MiFID II”) and Regulation (EU) 12866/2014 on key information documents for packaged retail and insurance-based investment products (“PRIIPS”), and implementing measures, some which may affect our issuer clients and any proposed issuance we are appointed on. In addition to communication clients may have received already from us on MiFID II, this note aims to provide more specific information on how MiFID II may impact the Primary debt new issue process.



1. Fee disclosure / Inducements

BNP Paribas does not consider investors to be clients during the new issue process. As such, the following disclaimer will be added to all transaction announcements sent by BNP Paribas sales to investors.

“Please note that in connection with this Offering, BNP Paribas is acting exclusively for the Issuer and no one else. Accordingly, in connection with the Offering, BNP Paribas will not be responsible to anyone other than the Issuer for providing the protections afforded to its clients or for the giving of advice in relation to the Offering.”

However, following the introduction of MiFID II, BNP Paribas has decided, in line with the spirit of the regulation, to disclose to investors, where possible, the fee received from the Issuer on Primary debt new issues. Specifically, BNP Paribas will disclose the relevant fee only to investors who receive an allocation. This will be provided to investors at the time of allocation publication. If an investor would like the amount to be disclosed to them ahead of allocation publication, Sales can do so on request (ONLY to investors with an active interest in the transaction). No disclosure should be made to investors after books have closed (with the exception of the disclosure to investors with an allocation as described above). This practice will be subject to issuer approval.

This disclosure will apply to any potential combined fee, placement fee or discretionary fee but not for purely underwriting, structuring or advisory fees. In terms of scope, this disclosure will apply to transactions executed and underwritten in the EEA which are also distributed by our European sales force. In short, disclosure will apply for EUR/GBP and RegS USD / other currency transactions executed in the EEA (and underwritten by BNPP SA) but not for 144a/SEC USD transactions which are executed in New York (and underwritten by BNP Paribas Securities Corp). For transactions executed in APAC the rules may vary depending on the BNP Paribas entity appointed. For these transactions the fee will be disclosed only to investors serviced by BNP Paribas’ EEA salesforce.

2. Product Governance / Target Market

We consider ourselves to be co-manufacturer and distributor on issuances executed in the EEA for which we have an active role. Generally we would not consider ourselves to be either manufacturer or distributor on transactions for which we have a passive role. For every transaction for which we are co-manufacturer, we will expect to agree on a target market with the issuer and any other co-manufacturers

Regulation **MiFID II**
January 2018

Key Dates

20 October 2011

The European Commission adopted a legislative proposal for the revision of MiFID in the form of a revised Directive (Recast MiFID) and a new Regulation (MiFIR), together MiFID II.

15 April 2014

MiFID II was adopted by the European Parliament.

3 January 2018

Application of MiFID II within all Member States

(i.e. “Professionals & Eligible Counterparties only” or “Retail, Professionals & Eligible Counterparties”.) This target market should be clearly communicated in the transactions announcement and in the transaction documentation. We also expect co-manufacturer language to be included in the subscription agreement.

Whether the target market for the transaction is “Professionals & Eligible Counterparties only” or “Retail, Professionals & Eligible Counterparties” we will take steps to ensure that:

- i. announcement communications contain clear information on the target market (e.g. Target Market: Professionals & Eligible Counterparties only or Target Market: Retail, Professionals & Eligible Counterparties)
- ii. the documentation of a given issue is consistent with the selected Target Market (this will include considerations such as denominations, type of listings, selling restrictions etc.)

As an additional measure BNP Paribas have sent a 1 way letter to all EEA investors ensuring that they understand their obligations when the target market is “Professionals & Eligible Counterparties only” (i.e. no distribution to retail).

We consider ourselves to be distributor on all transactions marketed to investors by our EEA sales. For these transactions we will send a separate communication to our (EEA) sales including the target market for the EEA (e.g. Professionals & Eligible Counterparties only).

For transactions where the issuer is considered a manufacturer under MiFID II but the lead managers do not consider themselves as manufacturers (e.g. Yankee transactions for issuers which are themselves MiFID II entities), target market language should be included in the transaction announcement and the documentation. However we do not require the inclusion of co-manufacturer language in the Subscription agreement.

3. PRIIPs

Please be aware that, in accordance with PRIIPs, ahead of issuing any security a) that is considered a “structured” product under PRIIPs AND b) which is targeting retail within the EEA, the issuer will need to produce a KID (Key Information Document). It is worth noting that PRIIPs implies that a vanilla bond is “structured” if for example there is a make whole clause (please note that a par or fixed premium call is not considered as structured in our view). Please also note that the KID obligations are relatively prescriptive so it will require more preparation / advanced warning compared to other transactions. The KID obligations are also continuous over the life of the bond.

Some SSA issuers are exempt from PRIIPs. If you are unsure of whether an issuance is in scope of PRIIPs, please contact us.

4. Obligations in relation to the provision of Corporate Finance Advice

In the case that BNP Paribas provides Corporate Finance advice to a client, prior to accepting a mandate we are required to inform the client of:

- the various financing alternatives available and an indication of the transaction fees associated with each alternative
- information on the timing of the pricing and placing process & details of targeted investors associated with the corporate finance advice provided
- the relevant contacts in connection with pricing and allotment of the security in connection with the provision of corporate finance advice

We will communicate this information to the client via the “BNP Paribas Pre-mandate disclosures letter” which is available to all issuers via [BNP Paribas MiFID II website](#).

We are also required to inform the client of our arrangements to prevent or manage conflicts of interest that may arise as part of the pricing and placing process. These topics are addressed in both the Allocation Policy and the BNPP Paribas CIB Conflicts of Interest Policy which can be found on our [MiFID II website](#).

5. Allocations

Our external Allocation Policy is available on our [MiFID II website](#). All allocations will be conducted in accordance with this policy unless we agree that a tailored allocation policy is needed for a particular transaction. This is possible and can be arranged between the active banks with the relevant notice.

In addition, for transactions executed in the EEA, the bank group will discuss with the issuer the proposed allocation principles prior to any final decision on the order book. This will provide the issuer with an opportunity to outline its priorities and requests with regards to distribution. Please note that these are not precise rules (e.g. prioritise distribution into real-money or prioritise distribution into investors who attended the roadshow etc.). The draft



allocations will be conducted according to these principles. After allocations have been completed, we will engage with the issuer to formally agree on the final allocations.

Separately the banks will keep a record of the justification of allocations which will be provided to our regulator on request. Our approach is in line with the industry approach agreed at ICMA. We will focus on providing justification for the top 20% of the book (top 20% by allocation size & top 20% by fill percentage). Banks will therefore seek to justify all orders within this scope when not obviously in accordance with the allocation principles agreed with the issuer.

Please note that we do not expect significant changes to the allocation outcome (unless of course requested by the issuer). We believe that we already allocate according to sound principles in line with industry guidelines and our own allocation policy which seek to minimise any potential conflict of interest between the parties involved (as outlined in our Allocation Policy). The most notable change under MiFID II is in the allocation process and record keeping.

6. Record keeping obligations

Please note that BNP Paribas has a number of record keeping obligations surrounding transactions that are in scope of the Underwriting and Placing rules. As a result, relevant calls, emails and other communications may be recorded, referenced and minuted and will be saved for future reference.

7. Unbundling of Research

There is a ban set out in MiFID II on EEA firms which provide portfolio management or independent investment advice receiving unpaid research. Other firms may also be caught within scope in certain Member States, e.g. UCITS managers in the UK.

If a client is subject to those rules, they must sign up to one of our research packages in order to continue receiving BNP Paribas Global Markets Research from 3 January 2018. To learn more, please contact your sales representative or email regreform.eu@uk.bnpparibas.com.

Appendix 1. Sample Issuer Cover Email

It is becoming common practice for lead managers to send a MiFID II letter to the issuer ahead of the transactions. Whilst this is not obligatory and does not on its own fulfil any regulatory requirements, it is considered good practice. The following is a sample letter that issuers might expect to receive.

Dear [] team,

On behalf of the Managers, we are delighted that you have mandated us for your forthcoming [] transaction (the "Issue") and we look forward to working with you on this project. As you know the Issue will be led by BNP Paribas, [...]. We will provide a more detailed working parties list.

MIFID 2 /FMSB New Issue Process Standard

As of 3 January 2018, relevant Managers are subject to the provisions of Directive 2014/65/EU ("MiFID II"), some which may affect you and the Issue, and as such we would like to take the opportunity to inform you of them.

- **Costs & charges**

The costs and charges to you as issuer and guarantor in relation to the Issue comprise fees to the management group of []% on the aggregate nominal amount of the Issue, save for other costs or fees as it may be documented in the subscription agreement.

- **Allocations**

Please let us know as soon as possible should you have any preferences regarding any specific names or the types of investor which should receive particular consideration on allocation, in accordance with applicable selling restrictions. We will send you our intended allocation strategy taking into account any preferences you may have communicated to us, and then drafts and a final copy of the allocations we have made for your approval.

You will be sent, or have already been sent, each Joint Lead Manager's policy concerning allocations.



- **Book Disclosure**
The lead banks will publicise book updates as and when required in order to achieve your objectives. Any such updates will be made publicly and will not be selectively disclosed. Please let us know as soon as possible should you have any preferences regarding book disclosure.

- **Product governance – target market and distribution channels**
The MiFID II “manufacturer(s)” of the Issue, will designate the target market as [professionals and eligible counterparties only / retail, professionals and eligible counterparties] and will select distribution channels which are appropriate for this target market.

The manufacturers are required to outline their mutual responsibilities relating to product governance in a written agreement. This will be formalised within the documentation for the Issue. Should you have any questions on this aspect please let us know.

PRIIPs

In addition, and in line with the restrictions set out in your documentation for the issue we are not aware that you are, or anyone authorised on your behalf is, preparing a key information document, or KID, for the purposes of Regulation (EU) No. 1286/2014 (the “PRIIPs Regulation”) in association with the Issue, nor do you intend to permit any other institution to produce a KID on your behalf. Please let us know if this is incorrect.

Kind regards,

Appendix 2. Sample transaction announcement (ECPs / Professionals only)

The following is an example transaction announcement. On transactions where manufacturer obligations apply, we would only expect 1 additional “target market” line compared to pre-MiFID II transaction announcements. On other transactions we would expect the agreed announcement to be similar to that of a pre-MiFID II transaction announcement. As described in section 1, BNP Paribas will include the below disclaimer.

Issuer	[]
Exp Issue Ratings	[] (M/F/DBRS)
Format	[RegS (Registered)]
Size	[CCY Benchmark]
Settlement	[] (T+X)
Maturity	[]
Coupon	[Fixed,Annual, Act/Act (ICMA)]
Guidance	[MS+X]
Listing / Denoms	[London / 100k + 1k Denoms]
Target Market	[MiFID II professionals/ECPs-only] (all distribution channels).
Bookrunners	BNP Paribas / []
Timing	[Books open, today's business]



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Appendix 3. Sample Allocation Priority mail

Dear XXX,

The Joint Bookrunners propose the following allocation priorities for the contemplated transaction. We kindly request that you respond to us prior to book closing, ahead of commencing the allocation process. Please get back to us with any additions or amendments to the criteria, otherwise we will proceed to allocate on the basis outlined below. We will rank the investors based on the following characteristics and behaviour.

(1) Investors with the following characteristics will be prioritised

- (a) the largest long-term investors, specifically central banks, pension funds and insurance companies and long-term asset managers
- (b) orders from long term investors, which are small in absolute size relative to the AUM, will also be treated in a similar fashion

(2) The following Investor behaviour will be prioritised

- (a) Investors who are helpful to the process for example with price leadership or early orders
- (b) Investors who the book runners reasonably expect to be long term holders of the securities
- (c) Investors who have supported similar transactions of this sector or type

In addition to this, investors participating in the switch will be prioritised in the allocation process.

This document aims to provide an overview of how the regulation will impact the execution of a public new issue; it is not exhaustive of all impacts of MIFID II. For further details on the impact on Liability Management & Private Placements, please contact us for more detail.

Please note that BNP Paribas does not provide legal or compliance advice to our clients. Please contact your Compliance or Legal department for more details on these MiFID II requirements and how they may impact you.

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BNP Paribas London Branch

10 Harewood Avenue, London NW1 6AA; tel: +44 20 7595 2000; fax: +44 20 7595 2555- www.bnpparibas.com.

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