



GERNANDT & DANIELSSON

White paper

PRIIPs Regulation in relation to corporate bonds

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1. Executive summary

In general, a “plain vanilla” Swedish corporate bond issued on a stand-alone basis, or under an MTN programme, with fixed or floating interest or zero coupon would generally not be deemed to fall within the scope of the PRIIPs Regulation. However, the assessment on whether a corporate bond¹ is to be considered a PRIIP must be done on a case-by-case basis and with an assessment of each specific feature of the terms and conditions. Below is a simplified and condensed version of the guidance presented in section 4, which should be read together with this executive summary.²

The list includes common bond features but is not an exhaustive list of all features that must be considered when assessing whether a bond is to qualify as a PRIIP. It is essential to consider whether a feature in the bond terms and conditions involves exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor, as such exposure would classify the bond a PRIIP.

Type of feature	PRIP with KID obligation?	Additional comments	Find feature in terms and conditions
Fixed rate and zero coupon bonds	No	Fixed rate and zero coupon (<i>Sw. nollkupong</i>) as features do typically not entice any fluctuations in the amount repayable. Refer to section 4.1.	A bond's interest rate is typically detailed in the definition list and the section on interest, found in section 9 in the Standard Terms and Conditions.
Plain vanilla floating-rate bonds	No	Plain vanilla floating-rate bonds with IBOR benchmarks, such as STIBOR or EURIBOR, are typically not considered as PRIIPs. Refer to section 4.2.	A bond's interest rate is typically detailed in the definition list and the section on interest, found in section 9 in the Standard Terms and Conditions.
Other variable interest rate	Not always	The underlying reason for the variable interest rate must be established, if the fluctuations are because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor, the bond may constitute a PRIIP. Refer to section 4.2.	A bond's interest rate is typically detailed in the definition list and the section on interest, found in section 9 in the Standard Terms and Conditions.
Callable	Not always	If the repayable amount fluctuates because of the call option, the feature must be carefully examined. Taking this into consideration, according to market practice, make-whole clauses are generally not considered to classify the bond as a PRIIP, although caution must be taken. Refer to section 4.3.	Information on whether a bond is callable is typically found in the section on redemption and repurchase of the bonds, found in section 10 of the Standard Terms and Conditions.
Puttable	No	Considered to be a contractual right of the retail investor to exit the investment, thus not resulting in the bond being a PRIIP. Refer to section 4.4.	Information on whether a bond is puttable is typically found in the section on redemption and repurchase of the bonds, found in section 10 of the Standard Terms and Conditions.
Convertible	Yes	The amount repayable is considered to fluctuate based on the performance of an asset that is not directly purchased. Refer to section 4.5.	If bonds are convertible, it's usually stated on the cover page of the terms and conditions, and in several clauses on conversion and related conditions.
Subordinated	No	Subordination of bonds do not lead to any fluctuations in the amount repayable due to that particular feature. Refer to section 4.6.	Whether bonds are subordinated may be found on the cover page of the terms and conditions as well as in sections on status of the bonds and distribution of proceeds, found in section 2 and section 16 of the Standard Terms and Conditions.

1 Corporate bonds are long-term debt securities issued by non-government entities (Commission, 'Analysis of European Corporate Bond Markets – Analytical report supporting the main report from the Commission Expert Group on Corporate Bonds', November 2017).

2 The guidance in this executive summary is mainly based on the Joint ESA Supervisory Statement, refer to section 4 for detailed references and explanations.

Type of feature	PRIP with KID obligation?	Additional comments	Find feature in terms and conditions
Perpetual	No	The feature that a bond is perpetual does not lead to any fluctuations in the amount repayable due to that particular feature. Refer to section 4.7.	Perpetual bonds do not contain a definition of a final maturity date and typically contain a clause stating that the bonds constitute perpetual obligations.
Variable redemption premium	Not always	Consider the reason for the variation. If the fluctuations are because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor, it may be a PRIP. Refer to section 4.8.	Features that may generate a variable redemption premium may be found in several sections of terms and conditions, including but not limited to in the definition list and section 10 of the Standard Terms and Conditions.

2. What is the PRIIPs Regulation and its purpose?

2.1. The purpose of the PRIIPs Regulation

The PRIIPs Regulation³ was introduced as a measure to enhance investor protection and restore retail investors' confidence in the financial markets, particularly in the aftermath of the 2007–2009 financial crisis. The PRIIPs Regulation is specifically intended for retail investors and is therefore exclusively applicable to financial instruments made available to retail investors.⁴

“PRIIP” stands for Packaged Retail and Insurance-based Investment Product, whereas the term “PRIP” refers to Packaged Retail Investment Product. The PRIIPs Regulation is applicable to a wide range of investment products, including but not limited to, certain structured products, derivatives, funds and insurance-based investment products as well as some corporate bonds, which under specific circumstances may qualify as PRIPs. However, not all corporate bonds made available to retail investors fall under the PRIP classification. To determine whether a corporate bond qualifies as a PRIP, each bond must be assessed on a case-by-case basis, considering its specific terms and conditions. Furthermore, there are some types of financial instruments that are not in scope of the PRIIPs Regulation, for example assets that are held directly, such as corporate shares and sovereign bonds.⁵

2.2. Effects of the PRIIPs Regulation

The assessment on whether certain bonds are to be qualified as PRIPs must be done before the bonds are made available to retail investors. However, it must be taken into account that bond terms and conditions may be amended during the bond's tenor, for example, through a written procedure. Such amendments could introduce features to the terms and conditions that would qualify the bonds as PRIPs. It is not particularly likely that changes to the terms and conditions of bonds would commonly result in bonds being reclassified as PRIPs, but this possibility cannot be ruled out. Our view is that, in these instances, there is an obligation to prepare a KID based on the amended terms and conditions and thus comply with the PRIIPs Regulation. This assessment must be conducted whenever changes to the terms and conditions occur.⁶

If a bond is classified as a PRIP and consequently made available to retail investors, the manufacturer of the PRIP, *i.e.* the issuer of the bonds, is obliged to produce a standardised Key Information Document (“KID”). The KID provides the retail investor access to clear pre-contractual information of the financial instrument, particularly with respect to its risks, performance and costs. The KID outlines the key features and essential information of the financial instrument to potential retail investors in a clear, concise and easily comparable format. A KID must be provided, free of charge, to potential retail investors in good time before the retail investors are bound by any contract or offering relating to a PRIP.

³ Regulation (EU) No 1286/2014 of the European Parliament and of the council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

⁴ The definition of “Retail investor” is found in article 4(6) in the PRIIPs Regulation, with reference to, inter alia, the definition of retail client in Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFID II), defined as a client who is not a professional client.

⁵ Recital no. 7 to the PRIIPs Regulation.

⁶ It is important that persons advising on, or selling, PRIIPs ensure that they stay informed about the terms and conditions directly from the issuer of the bonds, and remain vigilant for any updates to the terms and conditions.

The issuer is responsible both for the production and the accuracy of the KID. A KID must be reliable for potential retail investors and must therefore be kept up to date, meaning that an issuer is responsible for potential revisions of a KID. The issuer shall review the information contained in the KID every time there is a change that significantly affects or is likely to significantly affect the information contained in the KID and, at least, every 12 months. This responsibility should continue to apply for as long as the PRIIP is traded on secondary markets.⁷

The PRIIPs Regulation does not distinguish between PRIIPs sold with or without advice provided to the retail investor, or if a PRIIP is acquired by the retail investor on its own initiative or otherwise. For any PRIIP made available to retail investors, the issuer must produce and publish a KID on its website. Even where a PRIIP is sold exclusively by persons other than the issuer, the issuer is nonetheless required to draw up and publish a KID for the product on its website. Further, a person advising on, or selling, the PRIIP must provide the retail investors with a KID. Consequently, distribution of a PRIIP without a KID is a breach of the PRIIPs Regulation.⁸

Under national legislation, sanctions may be applied to both the issuer and the person advising on, or selling, a PRIIP, if either party breaches its obligations under the PRIIPs Regulation.⁹

This white paper focuses exclusively on the impact of the PRIIPs Regulation on corporate bonds, with particular focus on how to assess whether certain features in the bonds' terms and conditions meet the criteria for classification as a PRIIP or not. When corporate bonds are made available to retail investors, various other regulations at both the EU and national level must be considered, including, for example MiFID II (which includes, inter alia, product governance requirements) and the prospectus regulation¹⁰, however, this white paper will not address these or other relevant regulations, as the focus is *solely* the PRIIPs Regulation.

3. The PRIIPs Regulation and corporate bonds

A corporate bond is to be considered a PRIIP if each of the following conditions are fulfilled:

- (i) the investment product is provided to retail investors,
- (ii) the investment product is "packaged"¹¹, and
- (iii) the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor.

When assessing whether a certain corporate bond qualifies as a PRIIP the most important consideration of the three criteria above is (iii), *i.e.* whether the amount repayable may differ depending on a variety of pay-out events.

It is not always clear when a corporate bond falls within the scope of the PRIIPs Regulation. The assessment as to whether or not a particular bond is a PRIIP must be performed on a case-by-case basis, taking into account all the features of the relevant bond, regardless of its type or name.

Regarding medium term notes ("MTN") programmes, both the MTN framework and the final terms of bonds issued under the framework must be reviewed in order to assess whether the bonds issued under the framework will be considered PRIIPs or not. While a review of the framework might be indicative in regards to the PRIIP assessment, the final terms still must be reviewed in order to make a final assessment.

⁷ Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 and recital no. 12 to the PRIIPs Regulation.

⁸ Communication from the commission, 'Guidelines on the application of Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs)', 7 July 2017.

⁹ *Sw. Lag (2017:317) med kompletterande bestämmelser till EU:s förordning om faktablad för Priip-produkter.*

¹⁰ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

¹¹ Guidance on the definition and scope of the term "packaged" is limited.

4. Guidance for assessing whether a corporate bond qualifies as a PRIIP

As previously mentioned, when assessing whether a corporate bond qualifies as a PRIIP, the assessment must be performed on a case-by-case basis and each individual feature of a given corporate bond should be considered, regardless of the bond's type or name, and where a bond combines different features, each feature needs to be considered separately.¹²

Bonds commonly referred to as plain corporate bonds, which typically have fixed repayable amount, (*i.e.* fixed coupon and principal), are considered to fall outside the scope of the PRIIPs Regulation and are thus not classified as PRIIPs. This is because the amount repayable for plain corporate bonds is not subject to fluctuation because of exposure to reference values, nor is it subject to the performance of one or more assets which are not directly purchased by the retail investor.¹³ Further, according to our interpretation of current market practice¹⁴, plain vanilla floating rate bonds are typically not qualified as PRIIPs. A plain vanilla floating rate bond constitutes a bond in which the interest is the sum of a selected Interbank Offered Rate (“IBOR”), *e.g.* STIBOR or EURIBOR, together with a fixed percentage.

However, it is insufficient to limit the review of the bond terms and conditions to the mechanics of the coupon and principal amount. As stated above, each feature of the terms and conditions must be considered individually in relation to the PRIIPs Regulation.

Below are some examples of bond features that may determine whether a bond falls within the scope of the PRIIPs Regulation. The guidance on determining whether a bond qualifies as a PRIIP in this section 4 is primarily based on documentation from European Supervisory Authority (“ESA”), as there is no clear legislation on this matter. It must be taken into account that guidance from ESA is not binding and is not to be considered as legislation. When ESA outlined its perspective on the matter, it also advocated for increased regulation on the issue. Moreover, the views of ESA and other market practitioners could change over time. Please note that the below examples are for illustrative purposes only, and variations or deviations may apply in specific cases.

4.1. Fixed rate

Description

Fixed rate bonds constitute bonds where the issuer pays a constant and predetermined interest amount to the bondholders. The interest rate remains unchanged throughout the duration of the bond's term.

Further, zero coupon bonds, *i.e.* bonds where investors buy bonds at a discount from their face value, are treated in the same way as fixed rate bonds, as the investors will receive the face value, when, subsequently, the bond matures. Thus, there is no fluctuation in the amount repayable.

Main considerations on the extent to which the bond would fall in the scope of the PRIIPs Regulation

There are not considered to be any fluctuations in the amount repayable. This would include:

- bonds with coupon payments fixed at a defined interest rate until maturity, including at zero;
- bonds with pre-defined changes in the coupon rate at fixed times prior to maturity.

Without prejudice to other features of a specific bond that could lead to review this assessment, this should lead to the conclusion that the “fixed rate” feature of a bond *per se* does not imply that this bond falls in the scope of the PRIIPs Regulation.¹⁵

¹² Commission, Director General ‘Guidance on bonds’, FISMA C4 LB/mp (2018) 4985716, 14 May 2019. Joint ESA Supervisory Statement.

¹³ Commission staff working document, ‘Impact Assessment Report’, SWD(2023) 278 final, 24 May 2023, p. 111-113. ICMA, ‘EU Retail Investment Strategy proposals – Regulation amending the PRIIPs Regulation Directive amending investor protection aspects of MiFID – ICMA feedback’, 28 August 2023.

¹⁴ In this white paper, when referring to the market, market practice or market practitioners, it is mainly referred to our view of the current Swedish bond market.

¹⁵ Joint ESA Supervisory Statement.

The feature in the bond terms and conditions

Bonds with a fixed rate normally contain a definition of the interest rate, in which the interest rate is defined as a specific coupon rate.

The terms and conditions of bonds with a fixed rate may contain a definition similar to the following example:

“Interest Rate” means [●] per cent. per annum.¹⁶

For MTNs, the interest rate may be chosen in the form of final terms in connection with the relevant issue under the MTN programme. The interest mechanics of fixed interest rates in MTN programmes may otherwise be constructed in the same way as for corporate bonds.

4.2. Variable rate

Description

A bond with a variable interest rate, commonly referred to as a floating rate bond or floating rate note, provides the bondholders interest payments that fluctuate over time. The interest rate is in general periodically adjusted based on a predetermined benchmark or reference rate.

Bonds with variable interest rate can be categorised into two categories: (i) plain vanilla floating rate bonds, where the interest rate is determined by a benchmark rate (e.g. STIBOR or EURIBOR) and (ii) bonds with interest rates linked to alternative underlying assets. The latter category includes, for example, equity linked bonds, where the yield is tied to the performance of an underlying equity or equity index, as well as commodity-linked bonds, inflation-linked bonds and currency-linked bonds.

Main considerations on the extent to which the bond would fall in the scope of the PRIIPs Regulation

The amount repayable is considered to be subject to fluctuations based on changes in the coupon rate. It is relevant to consider the basis for those fluctuations and whether there is any structuring.

Pre-defined increases or decreases¹⁷ in the coupon rate (i.e. coupon step-ups or step-downs¹⁸) which are not linked to a reference value or to the performance of one or more assets which are not directly purchased are not considered to result in a bond being a PRIIP. This is considered to include changes due to a ratings downgrade of the issuer, change of control event, or tax or regulatory event.

Where there is a direct link (with or without a spread that reflects the credit risk of the issuer) to an interest rate index, it is still considered to be an asset that is directly held unless there is additional structuring, such as a cap or floor (other than at zero); c.f. definition of a structured deposit. This direct link to an interest rate index would therefore not imply that the instrument is a PRIIP.

Therefore, not all variable rate bonds are considered to be in scope, but it is dependent on the specific “variable” rate feature, as well as the other contractual features of the bond.¹⁹

In light of above, it is our view, a view which is generally aligned with Swedish market practice, that plain vanilla floating rate bonds are typically not considered to be classified as PRIIPs, when the rate is floating because of an inclusion of IBOR for calculating the coupon, together with a fixed interest margin to be added to the IBOR base rate. In addition, we note that in the Joint ESA Supervisory Statement, the term ‘reference value’ does not seem to include the term ‘interest rate index’. It is not clear on what ground this distinction is made by ESA, and therefore, why it is, typically, acceptable to assess that interest rates depending on IBOR do not qualify a bond as a PRIIP, but the same cannot be said for other types of values. It could also be noted that in MiFID II article 4 (43)(a) an interest rate index is exemplified to be EURIBOR.

However, variable interest rates that are linked to, for example, the performance of the issuer’s shares, such as equity linked notes, or other underlying assets, such as goods, securities or similar, may be qualified as PRIIPs. If the terms and conditions include such features in regards to the variable interest rate, it is likely that the bond would qualify as a PRIIP.

¹⁶ Definition of “Interest Rate” in the Standard Terms and Conditions. The placeholder [●] represents a known numerical value, as determined by the bond terms and conditions.

¹⁷ In our view, the same conclusion should also be applied to decreases in the coupon rates.

¹⁸ In our view, the same conclusion should also be applied to coupon step-downs.

¹⁹ Joint ESA Supervisory Statement.

The feature in the bond terms and conditions

As stated previously, there are many different types of bonds with variable interest rate; therefore, a distinction can be made between plain vanilla floating rate notes and other types of variable yield.

The terms and conditions of bonds with a variable interest rate normally contain one or several definitions of the interest rate and other relevant terms. The terms and conditions of bonds with a variable rate may contain definitions similar to the following example:

“Interest Rate” means [[●] per cent. per annum]/[STIBOR/EURIBOR] plus [●] per cent. per annum]. [For the avoidance of doubt, if any such total rate is below zero then the Interest Rate will be deemed to be zero.]²⁰

For MTNs, as stated above, a floating interest rate may be chosen in the form of final terms in connection with the relevant issue under the MTN programme. The interest mechanics of floating interest rates in MTN programmes may otherwise be constructed in the same way as for other corporate bonds. Further, interpolation may be provided under MTN programmes, for example if the terms contain broken interest periods. In our view, if IBOR is interpolated during the first and the last interest period of the bond, then this does not, in itself, qualify a bond as a PRIIP.

4.3. Callable

Description

Callable bonds give the issuer the right, but not the obligation, to redeem the bonds before their scheduled maturity date. The specific conditions for call options may vary depending on each specific bond's conditions. The call provisions may include specific conditions under which the issuer may redeem the bonds early, including call dates and premiums. Furthermore, the terms and conditions may include provisions defining an initial period during which callable bonds cannot be redeemed, although such provisions are not guaranteed to be present.

Main considerations on the extent to which the bond would fall in the scope of the PRIIPs Regulation

It is considered that provisions that allow the issuer of the bond to redeem the bond before maturity constitute a contractual termination of the investment and therefore do not inherently result in a fluctuation based on an exposure to a reference value.

However, such features may result in that bond being a PRIIP, where the amount repayable at redemption is not fixed and fluctuation is caused by exposure to a reference value.

The inclusion of a clause that allows the issuer to pay off the remaining debt early using a reference rate to determine the net present value of future coupon payments that will not be paid (*i.e.* make whole) is expected to mean that the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values. However, where the mechanism to calculate the discount rate is known in advance to the retail investor, this could be considered as a separate case, and would not constitute a PRIIP in of its own.

Therefore, not all callable bonds are considered to be in scope, but some are expected to be on the basis of the specific “callable” feature, as well as depending on the other contractual features of the bond.²¹ In 2022, ESA clarified its viewpoint that a make-whole clause should not *per se* result in a bond falling into the scope of the PRIIPs Regulation.²²

The feature in the bond terms and conditions

The terms and conditions of callable bonds may contain a call option clause which stipulates that the issuer may redeem all, but not some only, of the outstanding Bonds in full, which is found in section 10 of the Standard Terms and Conditions. However, the specific provisions of a call option may vary significantly between different terms and conditions.

As stated above, the amount repayable at redemption may be variable and the fluctuation may be caused by exposure to a reference value. This is typically reflected in the bond's terms and conditions in the provisions regarding the calculation of amounts payable under a call option.

²⁰ Definition of “Interest Rate” in the Standard Terms and Conditions. Each placeholder [●] represents a known numerical value, as determined by the bond terms and conditions.

²¹ Joint ESA Supervisory Statement.

²² ESA, ‘Call for advice on PRIIPs: ESA advice on the review of the PRIIPs Regulation’, JC 2022 20, 29 April 2022.

For example, a feature which was more commonly used prior to the introduction of the PRIIPs Regulation in callable bonds, was the usage of a discount rate based on the applicable German Government Bond Rate or Swedish Bond Rate as at the time of the redemption (rather than being predetermined at the issue of the bonds). The usage of the feature decreased as it, according to market practitioners, could not be ruled out that such feature could classify the bond as a PRIIP.

Further, bonds may contain a make-whole call, which permits the issuer to redeem the bonds early. In 2023, the Commission proposed that make-whole clauses are to be excluded from the scope of what qualifies a bond as a PRIIP provided that the bonds are redeemed at a fair value, although it is not certain yet if this proposal will be adopted as legislation.²³ The proposal suggests the following amendment is added to the definition of a PRIIP in the PRIIPs Regulation: “*except if those fluctuations are only attributed to the inclusion of a make-whole clause as defined in Article 4(1)(44a) of [MiFID II]*”.²⁴ A make-whole clause is defined as follows in MiFID II:

‘make-whole clause’ means a clause that aims to protect the investor by ensuring that, in the event of early redemption of a bond, the issuer is required to pay to the investor holding the bond an amount equal to the sum of the net present value of the remaining coupon payments expected until maturity and the principal amount of the bond to be redeemed.

If the proposal is adopted, the regulation will clarify that the mere presence of a make-whole clause in the terms and conditions does not automatically lead to the conclusion that the bond is a PRIIP. In our view, this is already the market’s understanding of the PRIIPs Regulation, *i.e.* that simply the inclusion of a make-whole clause does not qualify the bond as a PRIIP, at least if there is no discounting involved or, the discounting contains a pre-determined, *i.e.* fixed, rate. Additionally, in our view, based on current market practices, a make-whole clause which uses the interest mechanic that future interest payments, until first call date, are determined by the IBOR as of the day that the call option is utilised, would not either, in itself, result in the bond being classified as a PRIIP.

On the contrary, if the make-whole clause does not contain a pre-determined discounting mechanism but instead refers, for example, to the German Bund Rate or Swedish Bond Rate as of a future date, a more restrictive interpretation may currently apply regarding whether the bond would qualify as a PRIIP. There may be other aspects of a make-whole clause which could qualify the bond as a PRIIP. The interpretation of which elements of a make-whole clause contribute to a bond being classified as a PRIIP may be influenced by investor protection considerations. There are a large number of different make-whole clauses, thus each make-whole clause must be examined on a case-by-case basis. However, in light of the Commission’s proposal, there could be forthcoming clarifications or changes concerning the make-whole clause in relation to the PRIIPs Regulation.

Below is an example of a make-whole clause without discounting, which would typically not constitute a feature that would make the bond be considered a PRIIP:

[10.3.1] The Issuer may redeem all, but not some only, of the outstanding Bonds in full:

- (a) any time from (and including) the [First] Issue Date to (but excluding) the First Call Date, at an amount per Bond equal to:
 - (i) [●] ([●]) per cent. of the Nominal Amount, together with accrued but unpaid Interest; plus
 - (ii) the remaining interest payments on or after the First Issue Date to (and including) the First Call Date;

For the purpose of calculating the remaining interest payments pursuant to Clause [10.3.1](a), it shall be assumed that the Interest Rate for the period from the relevant Record Date to and including the First Call Date will be equal to the Interest Rate in effect on the date on which notice of redemption is sent to the Bondholders in accordance with Clause [10.3.3]. The relevant Record Date shall be agreed upon between the Issuer, the CSD and the Agent in connection with such redemption.²⁵

As noted above, market consensus suggests that the inclusion of a make-whole clause with discounting at a pre-determined (*i.e.* fixed) rate does not, in itself, result in the bond being classified as a PRIIP. Below is an example of how such make-whole clause with a pre-determined discounting rate may be drafted in bond terms and conditions:

²³ Commission, ‘Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1286/2014 as regards the modernisation of the key information document’ COM(2023) 278 final (Commission’s Proposal).

²⁴ MiFID II.

²⁵ Section 10.3 in the Standard Terms and Conditions. Each placeholder [●] represents a known numerical value, as determined by the bond terms and conditions.

“**Make-Whole Amount**” means an amount equal to the sum of the present value on the relevant record date of:

- (a) $[100.00 + [\bullet] \text{ per cent. of the Margin}]$ per cent. of the Nominal Amount as if such payment would have taken place on the First Call Date; and
- (b) the remaining interest payments up to but not including the First Call Date,

where the present value in respect of both (a) and (b) above shall be calculated by using a discount rate of $[\bullet]$ per cent. *per annum*, and where the Interest Rate for the remaining interest payments in respect of (b) above shall be the Interest Rate in effect on the date on which notice of redemption is given to the Bondholders.²⁶

4.4. Puttable

Description

A puttable bond gives the bondholder the right, but not the obligation, to sell the bond back to the issuer before its maturity date at a predetermined price, which may be both at par and above par, provided that certain circumstances are met.

Main considerations on the extent to which the bond would fall in the scope of the PRIIPs Regulation

Provisions that allow the investor to sell the bond back to the issuer are considered to be a contractual right to exit the investment and not to result in a bond being a PRIIP.

Without prejudice to other features of a specific bond that could lead to review this assessment, this should lead to the conclusion that the “puttable” feature of a bond *per se* does not imply that this bond falls in the scope of the PRIIPs Regulation.²⁷

The feature in the bond terms and conditions

The circumstances under which an investor may obtain the right to sell the bond back to the issuer may vary depending on the specific bond’s terms.

The terms and conditions of puttable bonds may contain a clause similar to the following example, found in section 10 of the Standard Terms and Conditions where the repurchase amount normally is set at a fixed rate of 101 per cent. of the nominal amount together with accrued but unpaid interest:

Mandatory repurchase due to a Change of Control Event [or] [a Listing Failure Event] (put option)

Upon the occurrence of a Change of Control Event [or a Listing Failure Event], each Bondholder shall during a period of twenty (20) Business Days from the effective date of a notice from the Issuer of the Change of Control Event [or Listing Failure Event, as the case may be,] pursuant to Clause 12.1.3 (after which time period such right shall lapse), have the right to request that all, or some only, of its Bonds be repurchased at a price per Bond equal to $[\bullet]$ ($[\bullet]$) per cent. of the Nominal Amount together with accrued but unpaid Interest. However, such period may not start earlier than upon the occurrence of the Change of Control Event [or the Listing Failure Event, as the case may be].²⁸

4.5. Convertible

Description

Bonds, which allow conversion into shares, are known as convertible bonds.

Main considerations on the extent to which the bond would fall in the scope of the PRIIPs Regulation

Where the investor or issuer may convert the bond into shares of the bond issuer (or shares of another company) the amount repayable is considered to fluctuate based on the performance of an asset that is not directly purchased.

Convertible bonds would therefore be considered to fall in the scope of the PRIIPs Regulation.²⁹

²⁶ Each placeholder $[\bullet]$ represents a known numerical value, as determined by the bond terms and conditions.

²⁷ Joint ESA Supervisory Statement.

²⁸ Each placeholder $[\bullet]$ represents a known numerical value, as determined by the bond terms and conditions.

²⁹ Joint ESA Supervisory Statement.

The feature in the bond terms and conditions

If bonds are convertible, this is usually stated on the cover page of the bond terms and conditions, and in several clauses on conversion and related conditions.

The terms and conditions of the convertible bonds may contain a clause similar to the following example:

Conversion at bondholders' option

Bondholders have the right to require Conversion of some or all of their Convertible Bonds at any time during the period set forth below by sending a request for Conversion to the Company and the Agent.

We hold the view that the possibility for bondholders, through a bondholder voting procedure, to mandate the conversion of bonds into other securities should not be considered to fall within the scope of the PRIIPs Regulation, since that possibility is inherent in all debt instruments. Refer to section 17.4.2 of the Standard Terms and Conditions regarding the standard provision that bondholders may decide on a mandatory exchange of the bonds for other securities.³⁰

4.6. Subordinated

Description

Subordinated bonds are debt instruments that hold a lower priority in the issuer's repayment hierarchy compared to other liabilities. In the event of the issuer's liquidation or bankruptcy, the holders of the subordinated bonds are compensated only after the more senior creditors have been fully compensated.

Main considerations on the extent to which the bond would fall in the scope of the PRIIPs Regulation

There are not considered to be any fluctuations in the amount repayable due to the fact that a bond is subordinated. Without prejudice to other features of a specific bond that could lead to review this assessment, this should lead to the conclusion that the "subordinated" feature of a bond *per se* does not imply that this bond falls in the scope of the PRIIPs Regulation.³¹

The feature in the bond terms and conditions

If the bonds are subordinated their status as subordinated may be found on the cover page of the terms and conditions as well as in sections on the status of the bonds and distribution of proceeds, found in section 2 and section 16 of the Standard Terms and Conditions. Additionally, it is common for the terms and conditions of subordinated bonds to include references to an intercreditor agreement ("ICA"), which governs the ranking among various creditors. While an ICA may influence the bonds' ranking in relation to other debt over time, it is generally not regarded as impacting the determination of whether the bond falls under the scope of the PRIIPs Regulation.

4.7. Perpetual

Description

A perpetual bond is a type of bond that has no maturity date. Unlike traditional bonds, perpetual bonds do not have a set repayment date for the principal amount. Instead, the issuer is required to make ongoing interest payments to the bondholders. Usually, an issuer of perpetual bonds can postpone interest payments, and is only obliged to pay accrued interest to bondholders, if the issuer pays interest or dividend on other *pari passu* or subordinated instruments. As long as interest payments under the terms and conditions are maintained, the issuer is not obligated to repay the principal amount to the bondholders.

Main considerations on the extent to which the bond would fall in the scope of the PRIIPs Regulation

There are not considered to be any fluctuations in the amount repayable due to the fact that a bond is perpetual. Without prejudice to other features of a specific bond that could lead to review this assessment, this should lead to the conclusion that the "perpetual" feature of a bond *per se* does not imply that this bond falls in the scope of the PRIIPs Regulation.³²

³⁰ Please refer to section 2.2, regarding amendments to the terms and conditions and the consequences that follow.

³¹ Joint ESA Supervisory Statement.

³² Joint ESA Supervisory Statement.

The feature in the bond terms and conditions

Terms and conditions for bonds that are not perpetual contain a definition of the final maturity date, setting out the maturity of the bonds. When a bond is perpetual, there is no definition of a final maturity date.

The terms and conditions of the perpetual bonds may contain a clause similar to the following example:

Perpetual Bonds

The Bonds constitute perpetual obligations of the Issuer and have no fixed date for redemption. The Issuer may only redeem the Bonds at its discretion in the circumstances described herein. The Bonds are not redeemable at the option of the Bondholders at any time.

4.8. Variable redemption premium

Description

The premium at which the issuer can, or must, redeem the bonds – either on a call date before the final redemption date or at the final redemption date – may also be variable and contingent on different factors. For example, it may occur that the premium is determined based on sustainability linked targets or other types of quantifiable objectives.

Main considerations on the extent to which the bond would fall in the scope of the PRIIPs Regulation

It is our view that a variable redemption premium does not *per se* imply that the bond falls in the scope of the PRIIPs Regulation. However, it must be considered whether the variation of the redemption premium is due to reference rates or underlying assets. In such cases, the feature could be considered to make the bond fall in the scope of the PRIIPs Regulation. According to our assessment, inclusion of IBOR for calculating the redemption premium would not, typically, qualify the bonds as a PRIP.

Furthermore, it is not clear from our understanding of market practice, how internal reference values should be classified in this respect. Internal reference values are issuer- or group-related, e.g. reference values which are related to performance indicators such as sustainability linked goals, EBITDA, dividend rate or amount of retained earnings. There is limited guidance on how these internal reference values should be treated and if they classify a bond as a PRIP. It may be argued that bonds with internal reference values do not constitute a PRIP, while it cannot be ruled out that bonds with such features would be qualified as a PRIP.³³

5. The future of the PRIIPs Regulation in relation to corporate bonds

Since the introduction of the PRIIPs Regulation, the availability of corporate bonds available for trade for retail investors has decreased. In light of this trend, proposals have been put forward at the EU level regarding the PRIIPs Regulation. Such proposals have been presented as a part of the EU Commission's "Retail Investment Strategy" proposal. As stated above in section 4.3 (*Callable*), part of the Retail Investment Strategy, has been the proposal that corporate bonds with a make-whole clause are exempted from the scope of the PRIIPs Regulation, provided that they are redeemed at a fair value.³⁴ This limited clarification proposal is welcomed.³⁵ Additionally, there are some proposed changes regarding KIDs and other aspects of the PRIIPs Regulation. As of early 2025, these proposals remain at the proposal stage, and it is therefore unclear whether they will be adopted, and if so, when the proposals would enter into force.³⁶

³³ BaFin, Federal Financial Supervisory Authority, 'Supervisory treatment of individual features of corporate bonds under the PRIIPs Regulation', VBS 1-Wp 5430-2019/0071, 19 September 2019.

³⁴ Commission's Proposal.

³⁵ ICMA, 'Quarterly Report article: ICMA feedback on EU Retail Investment Strategy proposals', 11 October 2023.

³⁶ At a national level in Sweden, there are, as far as we are aware, currently no published national guidelines or similar from relevant actors, for example, the Swedish Financial Supervisory Authority which affect the assessment of whether a corporate bond shall be considered a PRIP or not.

6. Reference list

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