

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: UKLA Technical Note: UKLA/TN/308.2 Related party transactions – Modified requirements for smaller related party transactions

Lead regulator: FCA

Date of assessment: March 2017

Commencement date: Guidance finalised November 2015

Origin: Domestic

Does this include implementation of a Cutting Red Tape review? No

Which areas of the UK will be affected? National

Brief outline of proposed new or amended regulatory activity

Companies listed on the Official List (and typically admitted to the London Stock Exchange's Main Market) are subject to a number of rules when joining the market, as well as continuing obligations governing conduct, disclosure rules on an ongoing basis and on an ad hoc basis when they issue further securities. The rules are set out in the FCA's Listing Rules, Prospectus Rules and Disclosure and Transparency Rules. There are additional directly applicable requirements set out in European regulations, notably the Market Abuse Regulation (MAR).

The FCA's UK Listing Authority Department (UKLA) publishes Technical Notes and Procedural Notes, which are short guidance notes intended to provide additional clarity to listed companies and their advisers as to how the FCA interprets provisions in these rulebooks. The FCA typically issues these when it has received a number of questions on the same topic, or other market feedback. The guidance provided in these notes is new guidance, which was subject to public consultation and finalised in November 2015. The objective of this new guidance is to clarify our rules and help firms to have a better understanding about application of those rules.

We had previously produced guidance to give companies clarity on the requirements arising from smaller related party transactions (where the class test calculations are between 0.25% and 5%), which was contained in Technical Note TN 308.1, published in December 2012. Class test calculations compare the size of a listed company with the size of the transaction being considered. The results of the class tests are used to categorise transactions in accordance with the Chapters 10 and 11 of the Listing Rules as a Class 1 or Class 2 transaction, a reverse takeover or related party transaction.

In May 2014, Listing Rule 11.1.10R was amended to require that a company with shares admitted to the premium segment of the Official List must make a public announcement through a Regulatory Information Service (RIS announcement) when it enters into smaller related party transactions, rather than a private notification to the FCA. Listing Rule 11.1.10R requires the RIS announcement to provide a description of the transaction, identification of the counterparty, the value of the consideration, and the fact that it is a smaller related party transaction. While Listing Rule 11.1.10R provides companies with a mechanism to effect smaller related party transactions without shareholder approval, the RIS announcement ensures that such transactions are disclosed to shareholders.

Technical Note 308.1 provided guidance on the Listing Rule 11.1.10R requirement that premium listed companies must obtain a written confirmation from a sponsor that the terms of the proposed related party transaction are fair and reasonable to shareholders, providing a shareholder safeguard. There are currently 45 sponsor firms approved by the FCA; premium listed companies must appoint sponsors in relation to certain transactions or situations where the listing rules require their guidance.

We published an updated Technical Note TN 308.2 in November 2015 in Primary Market Bulletin 12 to reflect the May 2014 amendments to Listing Rule 11.1.10R. The updated Technical Note removed out of date rule references relating to the previous requirement to make a private notification to the FCA, which was replaced by the requirement to publish an RIS announcement in May 2014. The fair and reasonable confirmation was required both prior to May 2014 and following the 2014 amendments and does not represent a change in practice. The updated guidance provided current rule references in line with the 2014 amendments to the Listing Rules and did not itself impose any new or additional requirements on companies.

Which type of business will be affected? How many are estimated to be affected?

The guidance is relevant to companies with a premium listing on the Official List. As at 7 February 2017, there were 1,190 premium listed companies. This figure includes 671 funds, some of which are master-feeder funds together with feeder funds. A master-feeder fund is a structure commonly used by hedge funds, whereby investors put capital into feeder funds, which ultimately invest assets into the master fund. The master fund is responsible for making all portfolio investments and conducting trading activity. As a practical matter, each master fund and its corresponding feeder funds operate as a single unit for listing purposes so the actual number of affected companies will be lower than the total of 1,190.

Price base year	Implementation date	Duration of policy (years)	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2015	November 2015	10	-0.057	0	0

Please set out the impact to business clearly with a breakdown of costs and benefits

Note – for all cost estimates below we have assumed the guidance will be applied by experienced compliance staff at an estimated rate of £48/hour. The 2016 Robert Half salary guide estimates that a compliance manager in the risk and compliance function of a financial services company based in London earns between £70,000 and £104,000 per annum. Based on working 8 hours per day for 260 days each year our rate equates to £100,000 per annum and is therefore considered a suitably prudent figure for the purposes of our estimates.

Familiarisation cost

We expect that all 1,190 companies with premium listed equity will need to briefly review the 3 paragraph note. We would expect that the note would take less than one hour to read, digest, disseminate to relevant members of staff, and, if necessary, update the relevant procedure. This is an estimate of the maximum amount of time it might take a company as the three paragraph note reflects amended rule references¹. In practice, most companies would not need to take these steps as the 2015 guidance has only been updated to reflect rule references deleted in 2014, so we would expect that companies would already be aware of the amended rules and no further action would be necessary as a result of the publication of updated guidance. At the estimated rate of £48/ hour, the total estimated cost for all 1,190 premium listed companies would be £57,120. As discussed above, the actual cost is likely to be lower because the 1,190 premium companies includes master feeder funds and feeder funds (meaning that, for example, ten listed companies may in fact operate as one entity for practical purposes), however as it is not practical to quantify the number of listed companies which are feeder funds, we have included the total cost for all companies, including feeder funds.

Ongoing cost

We consider that this publication creates no ongoing costs for business because the expectations set out in it are wholly inherent in the existing rules and add no new obligations to those rules for any firms. The updated guidance only reflects the removal of outdated rule references made in 2014. Companies were already required to obtain a fair and reasonable confirmation from a sponsor prior to publication of the amended guidance, so there is no new cost to companies. Once companies are familiar with the updated guidance, we would not expect any additional increase in costs relating to ongoing compliance.

Please provide any additional information (if required) that may assist the RPC to validate the BIT Score.

The level of detail to which individual measures are scored is set to the nearest £100k. This means that where the total cost of measures is estimated at less than £50k they are scored as zero (both as EANDCB and BIT score) for reporting purposes.

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Link to Robert Half salary centre: <https://www.roberthalf.co.uk/news-insights/salary-centre-2016>

¹ We arrived at the one hour estimate based on the following calculation. The one page technical note contains approximately 300 words. The speed of reading technical text is 50-100 words per minute based on EFTEC (2013), "Evaluating the cost savings to business revised EA guidance - method paper" the time remaining to digest, disseminate the information and if necessary update the relevant procedures is based on our broader supervisory knowledge of how firms respond to our Technical Notes and also on supervisory conversations with firms about their procedures relating to this specific issue.