

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: UKLA Technical Note - UKLA/TN/406.1 Application of related party rules to funds investing in highly illiquid asset classes

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 March 2016. The objective of this new guidance is to clarify our rules and help firms to have a better understanding about application of those rules.

Technical Note 406.1, published in November 2015 in Primary Bulletin 13, provides guidance to premium listed, closed-ended investment companies in relation to related party transactions under Listing Rule 11. The guidance explains that while as a default presumption, Listing Rule 11 applies to all related party transactions, in some limited cases, funds with highly illiquid asset classes (typically infrastructure funds) may be able to demonstrate that, due to the nature of the asset class it invests in, certain disclosures normally required under Listing Rule 11 may not be required. The technical note makes clear that, if funds seek to pursue exemptions from this disclosure, they will need to demonstrate that purchases from the related party are the only viable option allowing the fund to provide investors with exposure to the asset class, and that the fund can demonstrate arrangements to manage any conflicts of

interest. This guidance clarifies the circumstances in which investment funds with highly illiquid asset classes may have further flexibility in complying with certain disclosure obligations, subject to agreement with the FCA on a case by case basis.

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

The guidance is only relevant to closed-ended investment companies investing in highly illiquid asset classes. Of the approximately 300 closed-ended investment companies with a premium listing on the Official List, an estimated fifteen companies have such an investment profile..

Price base year	Implementation date	Duration of policy (years)	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2016	March 2016	10	-0.014	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 changes 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 of the approximately 300 closed-ended investment companies with a premium listing on the Official List will need to briefly review the two page note, but on reading the explanatory guidance, investment companies that do not invest in highly illiquid asset classes (usually infrastructure funds) will immediately recognise that the guidance is not relevant to them. No further action will be required for these approximately 285 companies.

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 to reflect the guidance. At the estimated rate of £48/ hour, the total estimated cost for all 300 closed-ended investment companies would be £14,400. If we consider the total cost for the estimated 15 closed-ended investment companies with highly illiquid asset classes, this cost decreases to a total of £720. These are estimates of the maximum amount of time it might take a company, as the two page note provides flexibility in applying the existing rules for certain fund structures¹.

Ongoing cost

We consider that this guidance 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 guidance provides a practical discussion of the way that the Listing Rules have been interpreted for many years. Therefore, for existing issuers, there would be no expected cost as they are already aware of the existing rules. Although difficult to reliably quantify, on a net basis we expect the guidance to make the application of the Listing Rules easier and quicker because the guidance provides certain fund structures with additional

¹ We arrived at the one hour estimate based on the following calculation. The two page technical note contains approximately 730 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.

flexibility, producing a cost saving for businesses, namely those seeking to apply for eligibility in the future.

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.

Link to Robert Half salary centre

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