Financial Conduct Authority

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: UKLA/TN/314.1 – Reverse takeover and uncapped consideration

Lead regulator: FCA

Date of assessment: March 2017

Commencement date: March 2017

Origin: Domestic

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

Which areas of the UK will be affected? National

Companies listed on the Official List (and typically admitted to the LSE's Main market) are subject to a number of rules when joining the market, 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 MAR.

The UKLA's Technical Notes and Procedural Notes 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 2017. The objective of this new guidance is to clarify our rules and help firms to have a better understanding about application of those rules.

A company that has a premium or standard listing of its equity shares on the Official List must obtain approval from its shareholders before entering into a reverse takeover as set out in the FCA's Listing Rules. This involves the company producing a circular which is then vetted and approved by the UKLA and is then sent by the company to its shareholder notifying them of the details of the transaction and the resolutions to be voted on to approve the transaction. The Listing Rules include the criteria and method to allow companies to classify whether a transaction is a reverse takeover.

Following changes made in response to FCA Consultation Paper 12/2, the definition of reverse takeover was moved in the Listing Rules from LR 10.2.2R to LR 5.6.4R. The guidance in the technical note clarifies that the company must still apply the class tests in LR 10 when calculating the percentage ratio of a transaction (the mechanism used to determine if a transaction is a reverse takeover). As such, LR 10 Annex 1 (the annex which explains the percentage ratios and how to calculate them) continues to be relevant for companies to consider when classifying a transaction.

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

This guidance applies to all companies with a premium or standard listing of equity shares on the Official List (around 1,000 companies). In practice, only a subset of these will be affected by this guidance as the frequency that companies enter into potential reverse takeover transactions requiring shareholder approval will vary from company to company. There are approximately 25 applications for reverse takeovers in the UK each year.

Price base year	Implementation date	Duration of policy (years)	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2017	March 2017	10	-0.024	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.

Companies will already be familiar with the class tests in LR 10. We expect that all of the approximately 1000 companies with a premium or standard listing of equity shares on the Official List would find it helpful to familiarise themselves with the 1 page guidance note. For the approximately 1000 companies with a premium or standard listing of equity shares on the Official List who may find it helpful to familiarise themselves with the guidance, we would expect that the note would take approximately 30 minutes to read, digest, and disseminate to any relevant members of staff, and, if necessary, update the relevant procedure to reflect the guidance.

This is an estimate of the maximum amount of time it might take a company, as the 1 page note provides practical considerations in relation to how reverse transactions are classified under the existing rules. At the estimated rate of £48/ hour, the total estimated cost for all 1000 firms would be £24,000 (Robert Half salary guide)[1].

The guidance clarifies that the rules previously used by companies to classify transactions that could be reverse takeovers still apply following the move of the reverse transaction rules from Chapter 10 to Chapter 5 of the Listing Rules. Therefore, given the rules have not changed, there should be minimal impact to companies as a result of this guidance.

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

[1] We arrived at the 30 minute estimate based on the following calculation. The 1 page technical note contains approximately 150 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.