Key amendments to each Note

Primary Market Bulletin No. 6 - July 2013

The material changes to consultation version of the technical and procedural notes are marked below. The notes, as revised, have been added to the UKLA Knowledge Base.

UKLA/PN/901.2 - Eligibility review process

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In what circumstances do we review eligibility?

We also perform eligibility reviews ahead of a transfer of an existing issuer's listing under LR5.4A.3R (for example from standard to premium listing) and where an applicant has only listed debt securities and wishes to apply for an additional listing of shares or GDRs.

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How do we review eligibility for listing?

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- Where we have internal expertise or knowledge (usually in instances where the applicant operates in financial services and is supervised by us) we will discuss the applicant with ~~those~~ relevant colleagues, including supervisors at the PRA.

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Interaction of the prospectus review and the eligibility review

In these instances, although we treat the eligibility review and prospectus review as distinct matters, we will try to make sure that the same staff works on the two cases ~~to give applicants a~~streamline~~d approach~~ the process.

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Overview of the eligibility review

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In our experience the majority of eligibility reviews will end with a successful outcome from the applicant's perspective. In these cases, when the prospectus or listing particulars ~~has been~~ is approved, or when our review of the 'passporting' prospectus or equivalent document is complete, we will inform the applicant's advisers we are satisfied that the applicant is eligible for listing. In ~~almost all~~ many cases, certain conditions for listing will still be outstanding at that point – for example, because the securities have yet to be marketed, the distribution of securities to the public will be unknown and therefore it will not be clear that the shares in public hands rules have been satisfied. As a result we will express our view conditionally, citing the conditions still to be met, if any. The notification will be provided in writing.

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~~The applicant is notified of the Markets Regulatory Committee decision, as required by FSMA, in a statutory notice. If a decision notice is given refusing the application for listing, an applicant can refer the decision made to the Upper Tribunal (Tax and Chancery Chamber), an independent judicial body.~~

Can the eligibility letter be sent in before a draft of the accompanying document is ready?

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However, in ~~a small number of~~some cases, the applicant's advisers may wish to submit an eligibility letter before the draft prospectus or other document is submitted. An example of where this facility may be useful is where ~~This will usually be because~~ the

applicant has ~~significant~~ concerns that it may be ineligible for listing and wishes to seek guidance from us on the matters causing it concern before incurring substantial costs.
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These ~~initial~~discussions regarding eligibility are not a substitute for the proactive review of eligibility we need to conduct to be satisfied an applicant is eligible, which will happen once a prospectus or other document is submitted. As a result, choosing this option is likely to lengthen the eligibility review process. However, the option is there for ~~the minority of~~ applicants for whom it may be appropriate.

UKLA/PN/907.1 – Block listings

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Reasons for the block listing regime and our current approach
Block listings were originally designed to reduce the ~~unnecessary~~ administrative burden of routine, everyday admissions.
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Ordinarily, we operate on a presumption towards the usual application process (which represents most admissions), rather than block listings for all applications, as this enables us to properly scrutinise the individual circumstances of an issue ~~(whether for a new class of shares or a further issue).~~

Block listing is confined to limited circumstances so as to be compatible with our ~~the FSA's~~ statutory duty under s.75 (4) of FSMA to admit securities only where we are satisfied that relevant requirements have been met ~~are satisfied~~. Our rules relating to block listings are set out in LR3.5.

In practice, the block listing regime is used predominantly for routine employee share schemes (which benefit from ~~carry specific~~ exemptions under the Prospectus Directive) and, less commonly, the exercise of warrants into equity securiti~~har~~es and conversion of convertible securities (which are often accompanied by a document explaining the nature of the ~~scheme~~issuance) etc.

However, we recognise that there may be other circumstances in which the normal application process ~~may be~~is unnecessarily onerous. We intend to balance our statutory obligations as the competent authority for listing, with the needs of issuers who have a reasonable and justifiable need to access the block listing regime.

Practical issues regarding the block listing regime
How do issuers apply for a block listing?
Issuers wishing to apply for a block listing should complete an Application for Admission of Securities to the Official List form and submit it, together with other supporting documents (as required under LR3), 48 hours before the application is to be heard.

The application form can be found at:
http://www.fca.org.uk/firms/markets/ukla/information-for-issuers/official-list/listing-process

When should you~~to~~ use a block listing?
Although ~~the presumption is that~~usually a normal application is required, LR 3.5.2G provides that an applicant may apply for a block listing where the normal admission process is likely to be 'very onerous due to the frequent or irregular nature of allotments'.

The 'very onerous' condition

In practice, the 'very onerous' condition makes it unlikely that an issuer that is, for example, ~~only~~ contemplating infrequent ~~allotments, is seeking~~allotments, seeking flexibility 'just in case' for ~~reasons of convenience, or is~~procedural convenience, ~~merely trying~~ seeking to limit fees or acting speculatively (e.g. anticipating future events/demand), would be ~~in a position~~able to meet this condition and therefore justify a block listing.

Transparency around block listing applications
Block listing applications usually relate to the admission of securities that benefit from an exemption under the Prospectus Directive (PR1.2.2R and PR1.2.3R/s.85 and 86 of FSMA) or where listing particulars are not required.

With block listings we have much less visibility over the future allotments made under the ~~scheme~~ issue. ~~Therefore, issuers must be entirely transparent when submitting the application as to the precise nature of the block listing and its intended use, in order for the FSA to be able to assess the appropriateness of the case.~~
For this reason we require issuers to be entirely transparent about the precise nature and purpose of the block listing, for us to be able to assess the appropriateness of the case and to establish that the regulatory risk has been suitably contained.
How 'frequent' is frequent for the purposes of the Listing Rules?
Frequency is an important element. ~~on its own~~ However, it is not the defining characteristic ~~as to~~ about whether a block listing is warranted and the answer ~~question~~ will vary depending on the circumstances ~~relating to~~ of that particular application. Therefore, we do not set a specific hurdle ~~with regards to~~ regarding the frequency of allotments.

Investment companies
The reasons for requesting block listings will vary depending on the type of issuer and the specific circumstances. In the case of investment companies, an example of where a block listing may be appropriate ~~in certain circumstances, for example issuers need to issue~~ could be an investment company that is issuing shares to satisfy demand that cannot be met in the market.

We are aware that t~~T~~his situation may ~~also~~ create a short position ~~which can have an effect on~~ that could affect the share price, perhaps creating excessive premiums, which ~~that~~ may prove detrimental to existing shareholders reinvesting, and to new investors trying to acquire shares~~stock~~.

We recognise that the ability to use a block listing in situations such as these can be a useful tool for investment companies.~~to manage premium volatility, and that price discount and premium management is a legitimate activity.~~

In this type of situation, issuers should include information to support their application, which we may ~~We would take these arguments into consideration~~ consider when establishing whether the conditions under LR3.5.2G have been met e.g.:~~where we receive clear evidence of:~~

- evidence of a price premium
- ~~a meaningful~~ evidence of associated demand from third parties wishing to invest on a regular~~, if not almost daily~~ basis~~; or~~
- evidence of frequency of issues – evidence of where a meaningful time delay of having to make a one-off application would inhibit the ability to issue shares to investors etc, and
- any other relevant information that supports the issuer's application.

Issuers must of course bear in mind the market abuse regime when taking actions intended to influence market conditions.

What we expect of issuers and their advisers

~~It is not our~~ We do not intend~~tion~~ to be prescriptive, nor can we provide absolute certainty around about when a block listing may be appropriate.

The specific circumstances of each submission will vary from issuer to issuer and so it would be impractical to try to provide a one-size-fits-all approach. To do so could ~~potentially~~ limit our discretion to consider other reasonable block listing applications. ~~requests.~~

Block listings are a concessionary route, so when issuers make representations to us it is important that they ~~should set out~~ consider the practical issues set out above and in as much detail as possible:

- the circumstances around why~~suggesting~~ a block listing would be appropriate
- the intended use of the block listing, and
- all the evidence necessary to support their application ~~submission~~.

The decision ~~as to~~ about whether a block listing is appropriate ~~warranted~~ will be based on the facts provided to us. ~~Access to the block listing regime is intended only for issuers with a justifiable and demonstrable need. Therefore, w~~We expect~~that~~ issuers and their advisers to be open and cooperative, to make only reasonable ~~requests to the FSA~~for block listings and to take~~that~~ due care and attention ~~is taken~~ when producing ~~a submission~~ an application

Examples of instances where a block listing application ~~request~~ might be refused

Although we consider all block listing requests on a case-by-case basis, some examples of when a block listing application ~~There are a number of circumstances in which we will~~ may typically be refused include~~:to allow the use of a block listing. They include block listings that are put in place:~~

- ~~as a matter of course;~~requests that fail to satisfy the conditions set out in LR3.5.2G (i.e. onerous, frequent, irregular)
- requests that are solely for ~~the issuers~~ convenience
- requests that ~~in anticipation of~~ anticipate demand in the market rather than to meet actual demand~~(we are aware that this has lead to some blocks never having been used);~~
- for issuances that are likely to have very few allotments (e.g. SCRIPs, DRIPs etc.)
- solely ~~for~~to avoid~~ance of~~ certain fees, and
- ~~for the purposes of~~ to carry~~ing~~ out a placings.

UKLA/TN/506.1 - Periodic financial information and inside information

The importance of DTR 2.2.2 R ***, unless the narrow circumstances of DTR 2.5.1 R apply ~~– for instance, where negotiations remain in course~~.

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~~So i~~In practice, disclosure of information that falls within the definition of inside information,

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~~This is particularly significant as, f~~Following the introduction of the Transparency Directive in 2007, issuers are no longer required to disclose financial performance in a two-stage process via a 'preliminary results' announcement followed by an Annual Financial Report. ~~or 'Interim Results' announcement.~~ This potentially heightens the risk of inside information not being disclosed in a timely manner. Having said this, an issuer does not necessarily discharge its obligations under DTR 2 merely by announcing 'preliminary results'.

Issuers may also find useful previous guidance given by the UKLA in relation to inside information, available at UKLA Knowledge Base under 'regulatory announcements including inside information'.

UKLA/TN/621.2 - Risk factors

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Disclosure of risks in the prospectus summary

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To address the potential liability concern, the following statement may be ~~tracked and~~ included in the preamble to the **risk factors** section of a prospectus:

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Where included, the above wording should be tracked in full. However, the reference to ordinary shares may be amended to address the transferable securities the subject of the prospectus to which Annex 22, section D is being applied.

UKLA/TN/710.1 - Sponsor services

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Role of the sponsor following document approval

Listing and transfer of listing category

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(1) *** Therefore those declarations must continue to meet the required standards of care~~at the date of their submission~~ until the effective date of admission or transfer.

(2) Furthermore, a sponsor is under an obligation to inform the FS~~S~~CA ~~immediately if~~ of any further information known to it before the date of the admission to listing or the effective date of transfer that~~, which~~, in its reasonable opinion, could fall under LR8.4.3R(3), LR8.4.9R(3) or LR8.4.14R(3). Sponsors will therefore need to ~~ensure~~ consider how information received from third parties, or otherwise within their knowledge, which relates to the listing or transfer, is dealt with, so that relevant information is provided to the FCA in accordance with these rules~~. that its client and all its advisers are under an obligation to inform the sponsor immediately of any such information up to that date~~.

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Circulars and shareholder approval

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Sponsors will continue to be subject to the principles for sponsors set out in LR8.3 following the publication of a circular required by LR8.2.1R(2), (3) or (4). On completion of a transaction under LR8.2.1R(2), (3) or (4), the sponsor service ceases. Completion can take place some time after shareholders have voted on the resolutions in general meeting.

A sponsor will need to be mindful of its responsibilities ~~during this period~~up to completion, such as continuing to manage conflicts of interest in respect of the transaction. Where a sponsor is asked to give guidance or advice to their client during this period it will need to take reasonable steps to satisfy itself that the directors understand their responsibilities and obligations under the LRs and DTRs. More specifically, ~~A~~a sponsor may need to provide guidance to a listed company~~, for instance,~~ on the application of LR10.5.2R and/or LR10.4.2R.

As the period between the publication of the circular and completion may stretch into a number of months a sponsor should put in place arrangements with its clients that will allow the sponsor to be notified of possible issues that may affect the sponsor role during the period between publication of the circular and completion and that will allow clients access to guidance from sponsors on their LR and DTR obligations.

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