

FCA Procedural note

Listing securities via final terms

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA

Rules

UKLR 3, UKLR 20

Background and scope of this note

The FCA takes a streamlined approach when listing securities that are the subject of final terms. The usual system, where documents are submitted 2 business days ~~48 hours~~ before a listing hearing, is not followed in these cases. Instead, the issuers or agents acting on the issuer's behalf can get the securities listed by submitting the final terms before 2pm on the business day before listing is to become effective ~~admission is due~~.

This note sets out the following:

- how to list securities that are the subject of final terms;
- how to help avoid situations where securities that are the subject of final terms do not get listed.

~~This note does not however cover the process for submitting Final Terms to us where an issuer, for whom we are the home competent authority under the Prospectus Directive (PD), submits final terms to us in order to communicate the final terms to another EU jurisdiction. It is important to note there are separate listing requirements and PD requirements regarding final terms, and these require us to maintain separate administrative processes.¹ If an issuer wishes the relevant securities to be listed, it should continue to send final terms directly to the FCA for listing purposes using the process described below. Final terms filed with or received by the FCA via the HCA.finalterms@fca.org.uk email inbox which we maintain to facilitate the onward communication of Final Terms under the Prospectus Directive will not be considered for admission to the Official List. Where both listing and onward communication of final terms are required, both inboxes should be addressed in the email.~~

How to submit final terms for listing

Final terms should only be sent to the FCA and any recognised investment exchange (RIE) on which the securities are to be traded when the issuer and its agent are certain that these are complete, accurate and the securities are suitable for admission. In accordance with UK Listing Rule 3.4.820.5.12-R, final terms should be submitted in their definitive form by the issuer or their authorised agent to the FCA by 2pm on the business day before the admission is due listing is to become effective. Final terms should be submitted by email to Final.Terms@fca.org.uk. This ensures the greatest possible speed and accurate record keeping.

The sender will receive an automated response to confirm receipt of the final terms. However, please note that this automated response does not mean that admission will necessarily be granted. ~~If sending the final terms by email is not possible, please fax them to 020 7066 8364.~~

The issuer is responsible for ensuring that securities that are the subject of the final terms are suitable for admission. For example:

¹The obligations to communicate final terms for PD purposes were changed following an amendment to Article 5(4) of the PD, which took effect on 1 January 2016. Home competent authorities must now send final terms that have been filed with them, as home competent authority for PD purposes, to the competent authorities of host member states. Where the FCA is the host competent authority, it will now receive final terms directly from other competent authorities, rather than directly from the issuer.

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- the securities will be in issue at the time and date the listing becomes effective;
- issuing the securities does not require any additional terms and conditions from those set out in the base prospectus;
- no supplement to the base prospectus is required to list the securities; and
- the final terms document is in its definitive form.

The FCA processes the information disclosed on the final terms on to the Official List. We liaise with the RIE to ensure that the securities are admitted simultaneously to listing and trading on the day on which admission has been requested.

~~Occasionally, we receive final terms for reasons other than to be listed on the Official List. In these cases, we ask issuers and their agents to attach a covering note which makes it clear that the securities that are the subject of the final terms are not for listing.~~

Admission to trading

To comply with UKLR 32.2.3's eligibility requirements for admission, securities must be admitted to trading on an RIE market for listed securities. The final terms should also be submitted to an RIE so they can be admitted to trading. The FCA has procedures in place with RIEs to ensure that listing and trading take place simultaneously. However, companies must still comply with the rules of the respective organisations concerning the submission of final terms.

When are securities admitted to listing

Securities are only considered to be officially listed when the FCA announces this to the market in the form of its Official List Notice, which is released at 8:00am each business day, as per UKLR 203.2.7 G. Although we maintain the Official List on our website, the FCA's notice takes precedence over our website's list. While we make every attempt to keep our website up to date, we strongly recommend that issuers and their agents check the Official List Notice on the relevant date to ensure listing has taken place.

Please also note that the FCA does not list securities on a temporary ISIN code. Therefore when searching for securities on the Official List Notice or our website please do so using only the permanent ISIN.

What are the other circumstances where the 2pm approach may be used?

- Where the substance of the transaction is the submission of final terms (e.g. draw down prospectuses and draw down base prospectuses). In these instances, they may be sent in on the same timescales that we allow for final terms.
- Public sector issuers referred to in Article 1(2)(b) & (d) of the Prospectus Regulation paragraphs 2 and 4 of Schedule 11A of FSMA may also follow the 2pm approach but must also submit an application for the admission of securities form by the same deadline. <https://www.fca.org.uk/markets/primary-markets/forms> (~~www.fca.org.uk/markets/ukla/forms~~)

Circumstances where securities that are the subject of final terms may not be listed the following day

Occasionally, it is not possible to list the securities that are the subject on the basis of the final terms provided by the issuer or its advisor. As a result final terms received by the FCA may in certain circumstances need to be queried. Some examples are set out below of where we might query the listing of securities relating to final terms.

Firstly, the securities described in the final terms may not meet the eligibility requirements for the securities to be listed. Reasons include but are not limited to:

- When securities that are the subject of final terms have been submitted before their issue date. UKLR 32.1.5G states that the admission of securities cannot be conditional in any event.
- When securities are not being admitted to trading on an RIE's market for listed securities. For further information, please see UKLR 32.2.3R.
- When the final terms may describe a further issue but refer to a tranche of securities that have not been previously listed. For example, if three separate tranches of the same security are

referred to in one final terms, and we have not received final terms in relation to the previous tranches, further issues will not be listed by FCA until we have received and listed the outstanding securities. Please refer to UKLR 32.2.9R, which states that an application must relate to all securities of the relevant class, issued or proposed to be issued.

Secondly, when there is insufficient, contradictory or inadequate information to list the final terms. Common examples include:

- when the issuance programme to which they are connected has expired;
- when the ~~securities programme is not listed in London~~related securities programme prospectus has not been approved by the FCA;
- when the final terms state that the securities are not for listing; and
- when there is insufficient information in the final terms alone to allow the FCA to list the securities. This information may include ISIN numbers, denominations and maturity dates.

Other reasons why final terms may be challenged could include:

- ~~When the final terms we receive do not refer to the terms and conditions set out in the current base prospectus but instead are issued against older terms and conditions which have not been incorporated by reference into the current base prospectus incorporate by reference the terms and conditions of an older prospectus or base prospectus. This is inconsistent with the guidance in the ESMA Questions and Answers on Prospectuses. This is available on the ESMA website (www.esma.europa.eu).~~
- When a draft prospectus has been submitted to the FCA for approval, the subject of which is a security which is also the subject of final terms. In this situation the final terms should not be submitted.
- Where a base prospectus has been updated but the final terms refer to the previous base prospectus.
- Where the summary of the individual issue is not annexed to the final terms.
- ~~Where the final terms do not comply with the requirements of PRR Appendix 23, Annex 2[8]1.~~

What to expect when final terms are queried by the FCA

Other than where it is clear that the securities are not for immediate issue (e.g. where the final terms have future issue date), FCA will contact the agent or issuer who submitted the final terms to inform them we are querying whether it is possible to list the securities the subject of the final terms. This will initially be via a telephone call, followed by an email. When an agent has submitted the final terms and they have subsequently been queried, we would expect the agent to contact the issuer. This communication is vital as the correct payment of tax in relation to the securities may be subject to whether or not the listing has been successful.

It is important to note that we will not take any further action until advised to do so. So, securities that are the subject of final terms initially submitted will remain unlisted until appropriate remedial action has been taken, which would enable us to proceed with listing. If you are in any doubt about the appropriate remedial action that is required for a listing to proceed, please contact us.

Key steps that can be taken by the issuer or their agents to ensure a trouble-free listing of securities using final terms

- Ensure that no conditions or situations described in the section: 'Circumstances where securities that are the subject of final terms may not be listed the following day' apply to you.
- Send the final terms by email to Final.Terms@fca.org.uk with an attached covering note. On submission of your email you will receive confirmation of receipt. Check that the securities that have been submitted for admission are on the Official List Notice that is released every business day at 8am via an approved RIS news service. To see them select 'Official List Notice' for the headline type.