

FCA Procedural note

Schemes of arrangement and reconstructions

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 32.2.4R, UKLR 215.3.2R(3)(b), UKLR 215.3.6G

This procedural note sets out potential approaches issuers may take for transactions implemented by way of a scheme of arrangement in the context of listing and cancellation of securities from the Official List.

For the purposes of this note, in the UK a scheme of arrangement is a transaction sanctioned by the court under section 899 of the Companies Act 2006 where (i) an existing issuer enters into a scheme of arrangement for the purpose of imposing a new holding company (ii) an existing issuer issues consideration shares following an acquisition of/merger with another listed issuer which is effected by a scheme of arrangement or (iii) an existing issuer restructures in such a way that the issuer's listing is cancelled, with or without admission to listing of shares in a new company.

Primary Market Procedural Note

Since there are different ways of structuring transactions, the purpose of this procedural note is to illustrate examples of approaches that we consider meet the requirements of chapters 32, 203 and 215 of the UK Listing Rules. Whatever structure you propose, it is important you engage with the FCA as early as possible, providing a draft timetable, and you consider how the proposed structure meets the relevant requirements of the UK Listing Rules.

Usually transactions are intended to be structured so that the transaction as a whole completes simultaneously upon the scheme of arrangement becoming effective. For example, in the case of a new holding company, this means that the listing of the shares in the existing issuer is cancelled simultaneously with admission to the Official List of the shares in the new holding company.

One approach that issuers have used to ensure that this is the case is to ask us to suspend the listing of the existing issuer at 7.30 am on the morning of the day on which the scheme of arrangement court hearing takes place. The issuer then delivers the court order sanctioning the scheme of arrangement to Companies House during trading hours without breaching the eligibility conditions i.e. that the shares will no longer be transferable on delivery (UKLR 32.2.4R). Confirmation of the delivery of the court order would be provided to the FCA's Issuer Management team by 3pm (as required by UKLR 215.3.6G) enabling simultaneous admission of the new shares to listing and cancellation of the existing issuer's listing at 8am on the next business day.

We appreciate that issuers may want to avoid the loss of trading that such a suspension creates. An alternative approach is for issuers not to ask for suspension, but to submit documents to the FCA by 3pm on the business day before the day on which the transaction is to become effective, which demonstrate adequately the scheme will become effective on a specified date in the future as referred to in UKLR 215.3.2R(3)(b). Issuers should submit a letter confirming that the scheme has been sanctioned by the court, all conditions have been satisfied or waived and the scheme is irreversible. The issuer should be aware of the impact if the scheme does not become effective as expected. For example, when the listing has been cancelled, it is not possible to restore the listing – an admission application would need to be made and a new prospectus produced.