Primary Market Technical Note

Aggregating transactions

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 7.2.11R, UKLR 7.2.15R

The aggregation rules are a key component in the system of disclosure requirements provided in UKLR 7. Whilst this note discusses the aggregation requirements in UKLR 7, the same principles in this guidance note apply to aggregation requirements for related party transactions in UKLR 8.

UKLR 7 requires transactions to be classified according to relative size and sets out rules requiring disclosure appropriate to the size of the transaction. Specific disclosure requirements apply for significant transactions by commercial companies and for reverse takeovers. For reverse takeovers, s~~S~~hareholder approval is also required~~ for reverse takeovers~~. In that case, the enlarged entity emerging from the transaction is effectively a different business and is treated as a new applicant for listing. ~~Shareholder approval is also required for~~

~~significant transactions by closed-ended investment funds under UKLR 11.5.2.R.~~

UKLR 7.2.11R and UKLR 7.2.15R ~~–~~state~~s~~ that, when classifying a transaction under UKLR 7, other transactions completed in the previous 12 months must be aggregated with the one being classified in the circumstances set out in the rule (see below). Where the aggregated percentage ratio is 25% or more in respect of the aggregated transactions, t~~T~~he disclosure requirements in UKLR 7.3 (Significant transactions) or UKLR 7.5 (reverse takeovers) ~~will then~~ apply ~~in respect of the aggregated transactions~~. UKLR 7.2.12R and UKLR 7.2.16R, respectively, explain in more detail how the disclosure requirements apply in different ~~sceensarios~~scenarios. ~~as a whole~~.

Normally, as the rules make clear, transactions only need to be aggregated in defined circumstances. These circumstances are set out in UKLR 7.2.11R (1)(a)-(c~~3~~) and UKLR 7.2.15R (1)(a)-(c). ~~UKLR 11.5.3R sets out additional requirements for closed-ended investment funds.~~ However, UKLR 7.2.14(G) and UKLR 7.2.17G provide~~s~~ the FCA with scope to apply aggregation principles if necessary in circumstances other than those specified in UKLR 7.2.11R and UKLR 7.2.15R~~.~~.

We would typically rely on UKLR 7.2.14G and UKLR 7.2.17G to apply aggregation ~~preciniples~~ principles where we have concerns that an issuer was structuring a transaction in such a way as to avoid, under UKLR 7, the disclosure requirements for significant transactions or shareholder approval of a reverse takeover.

The aggregation rules are necessary to close possible loopholes and anomalies. Without them, transactions that would otherwise be significant enough to be subject to the disclosure requirements for significant transactions or require shareholder approval could be split into a series of smaller transactions. This scenario is addressed in UKLR 7.2.11R (1) (a) and (b~~2~~) and UKLR 7.2.15R (1) (a) and (b). Where these circumstances apply, the transactions are required to be aggregated for classification purposes.

UKLR 7.2.11R (1)(c~~3~~) and UKLR 7.2.15R (1)(c) addresse~~s~~ a slightly different anomaly. Without the aggregation rules, an acquisition of a substantial new business which leads to involvement in a significant new business activity would be subject to the significant transactions disclosure requirements ~~or~~ and, in the case of a reverse takeover additional shareholder approval and reverse takeover circular requirements ~~(for closed-ended investment funds)~~, whereas if the new business was assembled through a series of smaller third party acquisitions with the same effect, it would not. UKLR 7.2.11R (~~3~~c) and UKLR 7.2.15R (~~3~~c) apply~~ies~~ in such a case.

Similarly, without the aggregation rules, a very substantial acquisition of an unlisted business or assets might be classified a reverse takeover, whereas a series of smaller transactions might not, even though the business emerging from these deals is effectively a different business. Again, UKLR 7.2.11R (~~3~~c) and UKLR 7.2.15R (~~3~~c) would apply.

How do we aggregate transactions?

The requirement to carry out the class tests crystallises at the point at which the transaction is announced. As such, the impact on the issuer in relation to the market capitalisation test is measured at that point in time. UKLR 7 Annex 1 sets out the source figures to be used in classifying transactions.

When aggregating transactions, issuers should add together the class test percentages of the earlier completed transaction (as classified at that time) with the class test percentages of the subsequent transaction. The combined percentage will indicate the aggregated classification of the transactions.

For example, Company A enters into and completes a transaction in January and a second transaction in May of the same year. Both are in relation to the same business and are aggregated under UKLR 7.2.11R (1~~2~~)(b) or UKLR 7.2.15R (1)(b). The class test results are:

	January	**May**	**Aggregated results**
Consideration to market cap	15%	15%	30%
~~Profits test~~	~~10%~~	~~4%~~	~~14%~~
Gross assets	13%	7%	20%

On the above results the second transaction would be treated as a significant transaction requiring the publication of an RIS under UKLR

7.3.1R~~, or if Company A is a closed-ended investment fund, shareholder approval under UKLR 11.5.2R~~ as the aggregated results are greater than 25% for one of the ~~three~~ two tests.

It would not be appropriate to recalculate the class test results for the January transaction in May, as we consider that the class test regime seeks to measure the impact of a transaction on an issuer. This impact crystallises at the time a transaction is entered into, and is not affected by subsequent events such as a movement in an issuer’s share price.