

Primary Market Technical Note

Disclosure of “lock-up” agreements

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 1.3.3R; Annex 11 item 7.4, Annex 13 item 1.17, Annex 13 item 1.17 and Annex 26 item 5.7.3 of the PR Regulation; Article 12(1)(c) of the Market Abuse Regulation (MAR)

Investors with a significant equity holding in a company may enter into lock-up agreements with their brokers for a certain period of time. This may occur at IPO or following a secondary market placing. Normally, investors who are party to such agreements are under an obligation to their broker not to sell their shareholding for a certain period of time, save in certain limited circumstances. However, on occasion, such commitments can also be waived, cancelled or modified before the end of the term of the lock-up agreement with the consent of the broker.

Listed companies themselves, both in respect of their own shares and as investors in other companies, can be subject to the obligations imposed by lock-up agreements and should consider their disclosure

obligations in such circumstances. (Listed companies may, on occasion, also make disclosures on behalf of their significant investors).

Issuers should consider the implications of Article 12(1)(c) of MAR in relation to false or misleading information.

Further, UKLR 1.3.3R requires listed issuers to take reasonable care that information it notifies to a RIS or makes available through the FCA is 'not misleading, false or deceptive and does not omit anything likely to affect the import of the information'.

We would consider terms or conditions of a particular lock-up agreement which allow for a lock-up commitment to be modified, waived or cancelled by a party to the arrangement during the lock-up period to be relevant information within the scope of UKLR 1.3.3R. Depending on the way the lock-up agreement is explained, the market may conclude, in the absence of such disclosure, that the relevant agreement is irrevocable. Therefore, we would expect listed companies to provide sufficient clarity on this point when information regarding lock-up agreements is being announced or published.

Similarly, for transactions to which the Prospectus Regulation Rules apply, such as IPOs, explicit disclosure requirements exist in respect of the share securities note in the prospectus in relation to lock up agreements (-Annex 11 item 7.4, Annex 12 item 7.1, Annex 13 item 1.17 and Annex 26 item 5.7.3 of the PR Regulation). This requirement specifically mandates disclosure of the 'content and exceptions of the agreement' and an 'indication of the period of the lock up'.