

Primary Market Bulletin



July 2012
Issue No. 2

Newsletter from the FSA for primary market participants

Welcome to the second edition of Primary Market Bulletin. This edition covers a variety of issues relevant to market practitioners. We begin with a brief update for market participants on topical issues. The rest of this edition is dedicated entirely to the UKLA Technical and Procedural Notes (Notes) and the newly created UKLA Knowledge Base.

We have not updated our Notes since we introduced them in 2010. We have now decided to create the 'UKLA Knowledge Base' which is intended to be a single repository of all technical guidance available from the UKLA in respect of the Listing Rules and other Part 6 rules. The Notes form a key element of the UKLA Knowledge Base. We intend to keep the UKLA Knowledge Base (including the Notes) current so that it remains relevant and useful to market participants. This edition of Primary Market Bulletin explains how we intend to do this and it also explains the format of the UKLA Knowledge Base.

As part of our efforts in creating the UKLA Knowledge Base, we have revised and updated the existing Notes and we have also reformatted the existing Notes to enable simpler and more accurate referencing. Each Note is now presented on a topical basis and has a unique referencing number. We explain this in greater detail below.

In this edition, we are presenting the re-formatted Notes for consultation. We are also proposing to add new Notes to the UKLA Knowledge Base which are also being presented for consultation simultaneously.

The contents of this bulletin are set out in three sections as follows:

1. update and commentary;
2. the UKLA Knowledge Base and the re-formatted Notes; and
3. an explanation of the new Notes.

We invite your comments on this bulletin. Please send us your comments by **14 August 2012**.

You may submit comments by email at primarymarketbulletin@fsa.gov.uk.

Alternatively, you may send comments in writing to:

Hanna Teshome
UK Listing Authority
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Once we have received and considered your comments, the Notes will be published on the UKLA Knowledge Base. The Notes published following the consultation process will constitute FSA guidance. Please see our Reader's Guide (www.fsa.gov.uk/pages/Handbook/readers_guide.pdf) for a summary of the legal effect of guidance.

Section 1: Update and commentary

Markey User Survey 2010 – Investor feedback

As part of the 2010 Market User Survey, a series of interviews were conducted with a sample of market users, which, in contrast to the 2007 survey, included investors. It was clear from the interviews with investors, that most institutions had little practical knowledge of the UKLA or our rule books, reflecting the lack of a direct relationship with us. In [List! 26](#) we committed to providing more information on the UKLA to a broad range of institutional investors. We did this through contact with two investor bodies, the Association of British Insurers and the Investment Management Association. One outcome was to ensure that our newsletter was circulated to their largest members who, in turn, represent a significant proportion of the institutional investors in the UK market.

ESMA guidance on dividends is available

As part of its work to promote and apply the market abuse regime, the European Securities and Markets Authority (ESMA) has published some questions and answers (Q&A) on disclosure by issuers of information relating to dividends.

Issuers may wish to note the content of that Q&A, which can be found on ESMA's website: www.esma.europa.eu/system/files/2012-9.pdf.

Section 2: UKLA Knowledge Base and re-formatted Notes

The UKLA Knowledge Base (which will be launched when this consultation exercise is complete) is intended to be a single repository of the technical guidance available from the UKLA for the Listing Rules and other Part 6 rules. The UKLA Knowledge Base will include explanations of how we expect certain issues to be addressed and other information that may be useful to market practitioners. The Notes will form a key element of the UKLA Knowledge Base.

We have undertaken a comprehensive exercise of reviewing and revising our existing Notes in preparation for the launch of the UKLA Knowledge Base. Previously published information in the Notes that continues to be valid, current

and relevant has been re-produced in the new format. Information that is either outdated or superseded – for example, as a result of the proposed amendments to the Listing Rules (CP 02/12) or through implementation of the amended Prospectus Directive Regulations (EC/809/2004, as amended) – has either been updated or withdrawn.

In future, as the Notes require updating, we will consult on proposed revisions in the Primary Market Bulletin. Following a consultation period and having regard to the responses we receive, we will publish new or revised Notes on our website in the format we are now introducing.

In the new format, the Notes have been arranged on a topical basis and each Note has been assigned a unique reference number (e.g. UKLA/TN/101.1 or UKLA/PN/901.1). The ‘TN’ indicates that it is a Technical Note and the ‘PN’ indicates that it is a Procedural Note. The first three digits, ‘101’ and ‘901’ refer to the topic or title of the Note. These examples refer to the Technical Note titled ‘Restrictions on Transfer’ and to the Procedural Note titled ‘Eligibility Process’ respectively. The final digit ‘.1’ indicates that it is the first version of this Note to be published. If changes are made to the Note in the future, the final digit will be changed to ‘.2’, ‘.3’ and so on to reflect the most recent version of the Note.

There are approximately 72 Notes which we have re-formatted on this basis. These Notes can be accessed here:

www.fsa.gov.uk/library/policy/guidance_consultations/2012/1208

Section 3: Overview of newly proposed Notes

In this edition of the bulletin we are introducing three new Procedural Notes and eight new Technical Notes. These are new Notes that have not been previously published. This section provides an overview of these Notes with background and commentary on the proposal. The newly proposed Notes can be accessed using the same link as above and have been clearly marked ‘newly proposed’. The newly proposed Notes will be published on the UKLA Knowledge Base following the consultation period.

Procedural Notes

Block listings

We intend to publish a Procedural Note relating to ‘Block Listings’ to provide important contextual information that we hope will provide issuers and advisers with a greater understanding of the appropriate use of block listing facilities. The Procedural Note explains our current approach and some practical considerations that we think are relevant when submitting an application to the FSA for a block listing.

The proposed Procedural Note is set out in [UKLA/PN/907.1](#).

The UKLA decision making and review process

We intend to publish a Procedural Note regarding the UKLA decision making and review process. The feedback that we received from the 2010 Market User Survey made it clear that there was insufficient market understanding of the relevant procedures regarding our internal decision making and review process. This Note aims to provide our market participants with a greater understanding of how we make and escalate decisions internally, as well as details on how to request a review of our decisions.

We set out in the Procedural Note detailed guidance on the procedural aspects of our internal decision making process, as well as how to request a review of individual guidance given by the UKLA which relates to the Listing Rules, Prospectus Rules and Disclosure and Transparency Rules. These guidelines do not contain details of decision making where we issue statutory notices (see [DEPP 2](#) to [DEPP 4](#)) or of circumstances where there are referrals of UKLA decisions to the Upper Tribunal (see [FSMA Part IX](#) and rules and guidance governing the Upper Tribunal ([Upper Tribunal Rules](#))).

The proposed Procedural Note is set out in [UKLA/PN/908.1](#).

Sponsor firms – Ongoing requirements during re-organisations

A number of sponsor firms have recently been the subject of corporate re-organisations, for example, when one sponsor acquires another or when there is a change in control. There has been a consequent reduction in the number of sponsors on the List of Sponsors maintained by the UKLA and further consolidation may well occur in coming months. We intend to publish a Procedural Note to clarify the UKLA's expectations in these scenarios.

The proposed Procedural Note is set out in [UKLA/PN/909.1](#).

Technical Notes

Approval of circulars

We have become aware of instances where circulars that require UKLA approval have been published by Premium listed issuers without obtaining the necessary approval. It appears that this has resulted from a misunderstanding of what constitutes 'unusual features' under LR 13.2.2R(3). So we propose to publish a Technical Note to clarify our approach in this area.

The proposed Technical Note is set out in [UKLA/TN206.1](#).

Equality of treatment – Listing Principle 5

While enshrining the principle of equality of treatment, Listing Principle 5 also allows groups of shareholders to be treated differently where they are in a different position. We have become aware that the application of this principle to the treatment of small shareholders in certain share capital reorganisations has been poorly understood. We therefore propose to add a Technical Note on this topic.

The Note will make clear that we are concerned by transactions where a share consolidation is immediately followed by a share split with the express intention

of removing small shareholdings from the share register. We believe that it is possible that such reorganisations can be inconsistent with Listing Principle 5.

The proposed Technical Note is set out in [UKLA/TN207.1](#).

Long-term incentive schemes

We are occasionally asked whether LR 9.4.2(2) can apply to an arrangement to facilitate the retention or recruitment of a director. Through such queries we have come to believe there may be a misunderstanding around the application of this rule, and hence we are proposing to publish a Technical Note on this rule.

The proposed Technical Note is set out in [UKLA/TN208.1](#).

Related party transactions – modified requirements for smaller related party transactions

We frequently receive letters to address LR 11.1.10R, where issuers enter into smaller related party transactions. LR 11.1.10R(2)(b) requires a written confirmation from an independent adviser that the terms of the proposed transaction or arrangement with the related party are fair and reasonable as far as the shareholders of the listed company are concerned. Recently, several independent advisers have sought to use language that could be interpreted as limiting the scope of the opinion provided or the use by the UKLA of such letters. We propose to publish a Technical Note to clarify how we would expect this listing rule to be addressed.

Please note that Consultation Paper 12/2 proposes to amend LR 11.1.10R(2)(b) such that these confirmations would be provided by a sponsor. Please note that the content of the proposed Technical Note would equally apply to sponsors even if such an amendment is made.

The proposed Technical Note is set out in [UKLA/TN308.1](#).

Related party transactions – issuer's undertaking

LR 11.1.10R(2)(c) requires the issuer to provide the UKLA with an undertaking to include details of the relevant related party transaction or arrangement in the listed company's next published annual accounts. During 2011 we took a sample of issuers, where we were aware a smaller related party transaction had taken place, and conducted a review of the Annual Report and Accounts for compliance with this rule. The review highlighted a number of areas of concern.

Some accounts stated the identity of the related party but not the fact that it was a related party. Although consideration for the transaction was disclosed in most cases, in certain cases a figure for total consideration paid to or by the related party was not. In other cases issuers did not adequately disclose all other relevant circumstances. It was only with prior knowledge of the detail of these transactions that we were able to identify them as the same. In general, there was a lack of clarity in the way that the information was disclosed and in certain cases the information was disconnected or disjointed, which made it difficult to find all the relevant detail or to identify the transaction in question, even with our prior knowledge.

In light of our findings we propose to set out some basic guidelines in a Technical Note to ensure that disclosure standards improve. LR 11.1.10R does not specify the format the disclosure should take, however, we believe clarity is essential so as not to be misleading and to enable identification as a related party transaction under the Listing Rules. A number of the disclosures we reviewed failed in our view to fully meet the relevant Listing Rule requirements. The FSA may consider disciplinary action if it became apparent that standards are not improving.

The proposed Technical Note is set out in [UKLA/TN/309.1](#).

Prospectus disclosures on credit rating agencies

With the introduction of the Credit Rating Agency Regulation (EC) 1060/2009 (CRA Reg) there is now a requirement that any reference to a credit rating within a prospectus requires a statement as to whether the credit rating agency is registered in the EU. The proposed Technical Note provides specific details on the disclosure required within the prospectus depending on whether the Credit Rating Agency is established in the EU or elsewhere.

The proposed Technical Note is set out in [UKLA/TN/631.1](#).

Sponsor's obligations on financial position and prospects procedures

The sponsor declarations required by LR 8.4R form a vital part of the assurance that sponsors provide the UKLA, that the Listing Rules have been met by new applicants and listed companies (LR 8.3.1(1)R). During the course of our onsite sponsor transaction reviews, the Sponsor Supervision team has found an inconsistent approach to the work done by sponsors to enable them to come to a reasonable opinion about the matters that are the subject of the sponsor declaration given under LR 8.4R. We therefore intend to publish a Technical Note that outlines the UKLA's expectations of sponsors for one key aspect of the sponsor declaration, namely the assurance given regarding the financial position and prospects procedures established by the directors of the relevant issuer.

The proposed Technical Note is set out in [UKLA/TN708.1](#).

Sponsor transactions – Adequacy of resourcing

Sponsors are expected to have appropriate staffing arrangements to perform sponsor services with due care and skill. While each sponsor firm is different and each sponsor transaction gives rise to different issues, there are a number of common themes which the Sponsor Supervision team has observed with regard to staffing. We intend to publish a Technical Note on this aspect of the sponsor requirements to clarify our expectations.

The proposed Technical Note is set out in [UKLA/TN/709.1](#).