

Primary Market Bulletin

Newsletter from the FCA for primary market participants

March 2015 / No. 11

About this edition

Welcome to the eleventh edition of *Primary Market Bulletin*. We begin this edition with general news and information. We then explain the latest changes we have made, or are proposing to make, to our [Knowledge Base](#).

What's new?

FCA – Our Strategy and 2015/16 Business Plan

On 24 March, we published our [Business Plan for 2015/16](#), setting out the key areas of work we will undertake in the forthcoming financial year, as summarised in our [video](#).

This year's Business Plan follows on from our [announcement](#) in December 2014, where we set out details of how we intend to meet the regulatory challenges ahead following a detailed review of our strategy, priorities and ways of working. We have also released [details of the two divisions](#) that will undertake our supervisory and authorisations work, with each led by a director who will sit on the Executive Committee. The Investment, Wholesale and Specialists will be led by Tracey McDermott. Linda Woodall will head up the Retail and Authorisations division as acting director.

We thought it would be helpful to explain how the recent changes impact the primary market functions carried out by the UKLA Department. The changes announced in the strategy are intended, amongst other things, to enable us to form a more consistent common view on key markets and sectors and to engage with the issues they present in a more strategic way.

Under the new structure we have created a Market Oversight Division, comprised of the FCA's UKLA responsibilities and its market monitoring functions aimed at combatting market abuse. This focussed unit will bring together our responsibilities for the oversight of participants in both primary and secondary markets, enabling us to take a more holistic view of the markets we oversee.

Market Oversight sits alongside Enforcement in a newly created Enforcement and Market Oversight Division. This new structure does not reflect any significant change in regulatory philosophy or approach to our primary markets activities and does not signal a change in enforcement appetite in relation to UKLA matters. More generally, information flows between our enforcement and non-enforcement activities are not anticipated to change as a consequence of the new structure.

Bringing Market Oversight and Enforcement alongside each other recognises and builds on our credible deterrence agenda in combatting market abuse. By this we mean not just enforcement outcomes in relation to individual breaches but also, importantly, the educational engagement that

we strive to achieve by working together with industry and participants to improve the general understanding of and compliance with the rules on market abuse. The new structure does not imply a change in enforcement appetite in relation to this part of our activities and our ongoing supervisory and education work will continue to feature strongly in our efforts in this area.

Finally, we have created a new Markets Policy and International Division in recognition of the importance of effective engagement internationally, particularly in Europe, for achieving good policy outcomes for markets. This focus will be particularly important in both the primary market space with the current European focus on the Capital Markets Union programme, and in the secondary market with the upcoming implementation of MiFIR/MAR and MiFID II.

We are replacing the Electronic Submission System with new technology

In May 2015 we are launching a new Electronic Submission System to replace ELS (our existing electronic submission system).

This will allow you to continue to submit documents securely online to the UKLA for vetting just as you do today. The new system will offer a number of benefits, including:

- improved user experience through intuitive screens and better availability
- online registration
- the ability to submit documents more efficiently
- the ability to add colleagues from your own organisation to collaborate on a case
- improved quality of the data held on a case

Sponsors, authorised advisers and issuers wishing to submit documents to us via the new Electronic Submission System will be required to submit a registration request online. Registration must be on an individual basis as users will register their corporate email address as their username to log on to the new system.

There will be training materials and user guides available before the launch of the system. Please see the FCA website at <http://www.fca.org.uk/firms/markets/ukla/electronic> and the ELS homepage for regular updates and details of how to register. We expect the registration process to be available before the end of April.

Please share this information with any colleagues who will also use the system.

For further information or help, please contact our Operational Support team on 020 7066 8348.

European update – Draft Regulatory Technical Standards on prospectus-related issues under the Omnibus II Directive

ESMA's consultation on draft Regulatory Technical Standards on prospectus-related issues under the Omnibus II Directive [ESMA/2014/1186; 25 September 2014] closed on 19 December 2014. Responses can be viewed on the [ESMA website](#). The deadline for ESMA to deliver its finalised draft standards to the European Commission is 1 July 2015. The draft standards relate to:

- incorporation by reference
- prospectus approval
- prospectus publication, and

- the dissemination of advertisements

Early implementation of the Transparency Directive's requirements for reports on payments to governments

At the request of HM Treasury, we aligned the implementation of the requirement for reports on payments to governments (or 'country-by-country reporting') set out in Article 6 of the Transparency Directive (as revised by the Transparency Directive Amending Directive) with the implementation by the Department for Business, Innovation & Skills of the country-by-country reporting requirements set out in Chapter 10 of the Accounting Directive. The new rules came into force on 23 December 2014 in relation to financial years beginning on or after 1 January 2015.

The EU Audit Directive and Regulation

Both the [Department for Business, Innovation & Skills](#) and the [Financial Reporting Council](#) are currently consulting on proposals to implement the European Commission's Directive 2014/56/EU amending the Statutory Audit Directive and a new Audit Regulation 537/2014. The new requirements will take effect on 17 June 2016 and will introduce a number of more stringent requirements on audit firms in relation to the re-tendering of audit engagements, the rotation of firms and their partners and restrictions on and prohibition of certain non-audit services. The changes are likely to affect both audit firms and listed issuers.

The new Directive will also introduce more detailed requirements on how audit committees are composed, as well as extending the scope of which companies are required to have one.

Both current consultations, which deal primarily with which Member State options the UK should take up and with the high-level strategy that might be adopted to implement the Directive and Regulation, run to the end of March. However, both BIS and the FRC intend to re-consult on more detailed proposals in the summer at which point the FCA will also consult on consequential amendments to the Listing Rules implementing the new requirements on audit committees. The FCA encourages market participants to respond to both the current consultations, if they have not done so already, and to respond to the consultation papers due to be published over the summer, because some of the proposals put forward have the potential to affect the provision of certain listings related services by audit firms to their clients.

Final terms – feedback and amended rules published on 25 March 2015

On 25 March 2015 we published our feedback to the recent consultation on amendments to the Prospectus Rules regarding the submission of final terms, which were in [CP14/27 Quarterly consultation No. 7](#). The final rules, including transitional provisions, are published in [Handbook Notice No. 20](#).

Joint sponsors – policy statement and technical note published on 26 March 2015

On 26 March 2015 we published [PS15/07](#) setting out our feedback to the recent consultation on joint sponsors which was contained in [CP14/21 Feedback and Policy Statement on CP14/02, consultation on joint sponsors and call for views on sponsor conflicts](#). This policy statement outlines our final position and sets out some minor rule changes on joint sponsors. It also includes the technical note that was consulted on in CP14/21. The technical note provides

further guidance on communications between the FCA and joint sponsors. The rule changes and the technical note will take effect from 1 April 2015.

Consultation feedback and changes to the Knowledge Base

Ongoing guidance review

In PMB No. 8 we proposed to amend our Procedural Note on the UKLA decision making and review process (UKLA/PN/908.1). We are now considering making further changes to this note to reflect the new strategic approach and structural changes that we announced on 8 December. We expect to finalise the note or, if appropriate, re-consult, in the next edition of PMB.

Published guidance

We have made the following changes to the Knowledge Base, which we proposed in PMB Nos. 8 and 9:

- the addition of six new technical notes
- the amendment of eleven existing technical notes, and
- the deletion of one existing technical note

Here, we summarise the feedback received on our proposals, and our response to that feedback.

Category: Governance and conduct

UKLA/TN/203.2 – Compliance with the Listing Principles and Premium Listing Principles

In response to feedback concerning our proposed amendment to this note, we have deleted the reference to a standard listing 'of equity shares' in connection with the scope of the Listing Principles. This is because, as a result of changes made to the Listing Rules in May 2014 (*PS14/8 Response to CP13/15 – Enhancing the effectiveness of the Listing Regime*), the Listing Principles apply to issuers of all listed securities, not just equity shares.

Category: Transactions

UKLA/TN/305.2 – Hostile takeovers

We proposed amending this note to remove references to the requirement for a premium listed issuer to prepare a 28-day circular which, as a result of changes made to LR 13 in October 2014 (see *CP14/21*), is no longer required. We received feedback highlighting further references in this note to 28-day circulars under the heading 'Working capital'. We have now removed those references as well.

UKLA/TN/310.1 – Share buybacks – novel/complex approaches and Premium Listing Principle 5

We were asked to include specific examples of the circumstances in which we considered an issuer may, and may not, offer different terms to different shareholders in a share buyback and to address the circumstances envisaged by the note to Rule 23.2 in the City Code on Takeovers and Mergers. We have amended the note to address this feedback and have also made some minor drafting changes in response to other feedback.

Category: Regulatory announcements including inside information

UKLA/TN/522.1 – Disclosure of 'lock-up' agreements

We received feedback on this note suggesting that it is common for issuers to disclose that the terms of a lock-up agreement are 'subject to customary exceptions', rather than specifying each exception. In response, we have slightly amended the note. The onus should remain on issuers and advisers to consider the optimal approach to disclosure, taking into account the specific circumstances.

Category: Prospectus content

UKLA/TN/633.1 – Pro forma financial information

We received feedback on this note from a number of respondents and we have made changes to the note as a result. In particular:

- We were asked to reconcile the terms 'significant *firm* commitment' (ESMA Q&A 50 Aa) and 'significant *financial* commitment' (PR 2.3.1 Article 4a) for the purposes of the note. We have added wording to clarify that we believe that in practical terms they are the same thing.
- Several respondents questioned the extent to which the 'a+b=c' formula in the section 'What is pro forma financial information?' reflected the information that many considered is covered by the reference to 'pro forma financial information'. We added this section to assist issuers and their advisers in identifying information that should be subject to the requirements of Annex 2 of PR App 3 rather than to change the definition of pro forma financial information for the purposes of reporting. We have amended the note accordingly.
- Several respondents questioned the extent to which financial information underlying adjustments needed to have been previously published, as referred to in the section under the heading 'The preparation of a pro forma P&L'. Our intention was to help issuers and their advisers understand how the expression 'if applicable' in Annex 2 item 3 of PR App 3 should be applied. We have made several changes to clarify this section and also to draw out the relationship with the complex financial requirements set out in PR 2.3.1.
- In the same section, it was suggested that we present the question 'Can synergy benefits be viewed as "factually supportable" and included as pro forma adjustments?' as a separate sub-heading. Respondents were unanimous that the appropriate criterion for excluding synergy benefits is item 6(b) ('directly attributable to the transaction'), rather than 6(c) ('factually supportable') of Annex 2 of PR App 3, and we have made changes to reflect both these points.

We did not receive any feedback on our proposals for the following notes, which we have therefore added, amended or deleted as proposed:

Category: Eligibility for listing

UKLA/TN/101.2 – Restrictions on transfer

Category: Governance and conduct

UKLA/TN/204.2 – Ratification circulars

UKLA/TN/207.2 – Equality of treatment – Premium Listing Principle 5

UKLA/TN/210.1 – Cancellation of listing or transfer between listing categories – requests to waive the 20 business day notice period

Category: Transactions

UKLA/TN/311.1 – Discounted share issues and standard of disclosure in circulars

Category: Closed-ended investment funds

UKLA/TN/404.1 – Related party transactions by closed-ended investment funds – amendment of an existing investment management agreement to cover new money

Category: Specialist companies

UKLA/TN/422.2 – Scientific research based companies

Category: Regulatory announcements including inside information

UKLA/TN/521.2 – Assessing and handling inside information

Category: Disclosure of positions held by issuers, investors and management

UKLA/TN/540.2 – Transactions by persons discharging managerial responsibilities and their connected persons

Category: Prospectus content

UKLA/TN/621.3 – Risk factors

Category: Sponsors

UKLA/TN/703.1 – Sponsors: Creation and maintenance of records

UKLA/TN/704.2 – The sponsor’s role on working capital confirmations

UKLA/TN/708.2 – Sponsors’ obligations on financial positions and prospects procedures

Proposed guidance

We are consulting on the following further changes to the Knowledge Base:

- the amendment of one existing procedural note
- the addition of six new technical notes
- the amendment of three existing technical notes, and
- the deletion of two existing technical notes

Here, we summarise our proposals.

Procedural Notes

UKLA/PN/907.2 – Block listings

It has been suggested to us that, while providing further clarity, this note still leaves closed-ended investment funds seeking to use the block listing facility in connection with premium management arrangements uncertain as to whether they would be granted a block listing, and, if so, on the basis of which parameters. We propose to amend the note to clarify this aspect.

Technical Notes

Category: Governance and conduct

UKLA/TN/206.1 – Approval of circulars

Category: Transactions

UKLA/TN/303.1 – Circulars not requiring approval

We are proposing to delete these notes because of the changes to LR 13 regarding the circular approval perimeter that we published on 29 January 2015 ([Handbook Notice No. 18](#)). These new rules come into effect on 1 April 2015.

Category: Transactions

UKLA/TN/308.2 – Related party transactions – Modified requirements for smaller related party transactions

UKLA/TN/309.2 – Related party transactions – Content of RIS announcement

In PS14/8 we published the final rules resulting from our work to enhance the effectiveness of the Listing Regime. The package of measures, which came into effect on 16 May 2014, included amendments to LR 11.1.10R regarding the treatment of smaller related party transactions. We are now proposing to amend these notes to reflect that we no longer pre-approve the documentation for such transactions, and the new requirement in LR 11.1.10R(2)(c) that they are announced via an RIS as soon as possible upon entering such transactions.

Category: Closed-ended investment funds

UKLA/TN/405.1 – Investment management agreements and independence of the board

We are proposing to add this new note to the Knowledge Base to provide commentary on new developments we have observed in fund management agreements, and how they may interact with LR 15.2.19R.

UKLA/TN/406.1 – Infrastructure funds

We are proposing to add this note because we believe the market would benefit from clarity about when we may be satisfied that acquisitions from a related party should be considered to be in the 'ordinary course' for a closed-ended investment fund.

UKLA/TN/407.1 – Closed-ended investment funds with multiple share classes

We see a number of funds listed under LR 15 that have multiple classes of shares. We are occasionally asked how this should be reflected in the fund's investment policy. We are proposing to add this note to clarify this point.

UKLA/TN/408.1 – Eligibility of closed-ended investment funds

We are proposing to add this note to clarify how we assess the eligibility of applicants that seek a listing under LR 15, but have features that could suggest they are actually commercial companies, or investment entities that fail to spread investment risk. This note is intended to provide sponsors and applicants with greater clarity as to what aspects we consider as part of the eligibility review.

UKLA/TN/409.1 – Master-feeder structures

In 2007 (see [CP07/12 Investment Entities Listing Review](#) and the related policy statement, PS07/20) we made rules to allow the listing of feeder funds that invest in a master fund. We are proposing to add this note to set out our views on more innovative fund structures.

UKLA/TN/410.1 – Definition of 'investment manager'

We are proposing to add this note to clarify our interpretation of the definition of 'investment manager' for the purposes of LR 15.

Category: Sponsors

UKLA/TN/701.2 – Sponsors: Conflicts of interest

We have been asked to provide further guidance on the requirement for sponsors to identify conflicts of interest in circumstances that may fall outside their formal appointment as sponsor. We appreciate that there are practical challenges in carrying out full conflicts checks in certain situations, for example where a sponsor has been asked to:

- provide early stage guidance to an issuer (for example, initial class test advice or advice on IPO structuring) which falls within the LR definition of 'sponsor service', bearing in mind that this includes preparatory work that a sponsor may undertake before a decision is taken as to whether or not it will act as sponsor for a listed company or applicant or in relation to a particular transaction, or
- provide sponsor services outside of normal office hours or as a matter of urgency (for example, in a 'rescue' situation or when an issuer is in severe financial difficulty)

We are therefore proposing additional guidance in this note on our expectations in such situations.

We are also proposing to delete the paragraph titled 'Sponsor firms that act as agents' from this note as, from 1 February 2015, LR 8.7.16-18R will be deleted following consultation in CP14/2 Proposed amendments to the Listing Rules in relation to sponsor competence and other amendments to the Listing Rules and Prospectus Rules.

We want to hear what you think

Please send your comments on our latest proposals to primarymarketbulletin@fca.org.uk. Alternatively, send them by post to:

Darryl Smith
UKLA Department
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Please send us your comments by 11 May 2015.

Equality and diversity

We are confident that our proposals do not give rise to equality and diversity implications but we would welcome your comments should you have any concerns.

Useful links

To access the guidance referred to in this edition of PMB, see our website:

[PMB No. 8 guidance consultation](#)

[PMB No. 9 guidance consultation](#)

[PMB No. 11 guidance consultation](#)

[PMB No. 11 finalised guidance](#)