

Primary Market Bulletin

Newsletter from the FCA for primary market participants

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About this edition

Welcome to the 12th 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?

European Updates

In February 2015, the European Commission published its Green Paper on Capital Markets Union (CMU) and its consultation document on the review of the Prospectus Directive (PD3). The FCA published responses to both of these important topics; they can be viewed at: www.fca.org.uk/firms/markets/international-markets/eu

On 30 September 2015, the Commission published its Action Plan setting out, under 20 headings, actions and an indicative timetable to achieve a true single market for capital in Europe.

We continue to engage proactively with the Commission, as well as our peers and stakeholders, to review the PD3, and expect to report further news in due course.

In June, the European Securities and Markets Authority (ESMA) published its Final Report on the draft Regulatory Technical Standards (RTS) on prospectus-related issues under the Omnibus II Directive.

In September, we consulted in CP15/28 on the various amendments that we propose to make to our Prospectus Rules (PR) as a result of the draft RTS. This consultation closed on 5 October 2015. We await the Commission's decision regarding whether to endorse ESMA's draft RTS; once the final RTS are published in the *EU Official Journal*, we will make changes to our PR. Once the RTS' entry into force date is published in the RTS, we will update some of the materials on our website regarding the prospectus approval process.

In March, the FCA published CP15/11, a joint consultation with HM Treasury setting out the proposals to implement the Transparency Directive Amending Directive (2013/50/EU) (TDAD) through changes to the Financial Services and Markets Act 2000 (FSMA) and the FCA's Disclosure Rules and Transparency Rules (DTRs). The FCA also proposed other miscellaneous

changes to the DTRs. On 6 November 2015, the FCA published [PS15/26](#) a joint Policy Statement with HM Treasury, which summarised the feedback to those proposals and set out the final rules. The new rules will come into force on 26 November 2015. The expectation is that vote holders will reconsider their holdings on that date and, if applicable, recalculate and make a new notification within the timeframes set out in DTR5.8.3R, taking into account that the DTR notification requirements will be applicable to stock lending transactions from that date.

The TDAD also revised the home Member State rules, which are set out in [PS15/26](#). From 26 November 2015, all issuers must disclose their home Member State to the competent authority of the Member State where it has its registered office, where applicable, to the competent authority of the home Member State and to the competent authorities of all host member States. To assist with this ESMA has published a standard form for the notification of home Member State. This [form](#) is available on our website and on completion must be submitted to the FCA by email to tdhomestate@fca.org.uk.

If an issuer has a choice of home Member State and does not declare this information within three months of its securities first being admitted to trading, a default home Member State will be given (where its securities are admitted to trading, or multiple if they are admitted to trading in more than one jurisdictions). The new default provision under the TDAD will also apply to any existing issuer who has a choice of home Member State but has not yet notified the FCA of their choice. Therefore, **we request all issuers who have not yet notified the FCA of their choice of home Member State to do so by 26 February 2016** using the standard notification form. In addition, **any existing issuers incorporated in the Union who do not have a choice of home Member State will also need to inform the FCA of their home Member State**, if they have not already done so.

In respect of existing issuers who have already disclosed their home Member State to us, there is no obligation under the TDAD to do so again. However, the new ESMA notification form contains more detail than previously requested by the FCA. **Therefore, we would also ask all existing issuers to submit the form to us.** The importance of holding more detailed information on all issuers with securities admitted to trading in the UK is that the information will be passed to ESMA, who will maintain a centralised list for all issuers regulated by EU NCAs. Such list will be updated on a six monthly basis and will be for the use of NCAs only at this stage.

Issuers should also use the same form to update the FCA of any change in the information previously provided.

ESMA have also published a new [standard form for the notification of major holdings](#). At this time, the FCA will continue using the existing TR1 form but propose implementing the new ESMA standard form in the future.

In September, ESMA published a [Consultation Paper on the draft RTS on the European Single Electronic Format](#) and also published its [Final Report on draft RTS on European Electronic Access Point](#), under the Transparency Directive.

Electronic Submission System

We continue to look to streamline our operational procedures in relation to providing guidance and performing reviews. The old ELS document submission system has now been decommissioned, having been replaced by the upgraded Electronic Submission System (ESS). We are grateful to those stakeholders who have provided feedback and assisted with the launch of ESS.

Sponsor annual notifications reminder

With the end of the year approaching, we would like to remind approved sponsor firms of the requirement in LR8.7.7R to provide us with an annual notification each year. The annual notification is a confirmation in writing that a sponsor continues to satisfy the criteria for approval as a sponsor as set out in LR8.6.5R. In particular, we would like to draw attention to the fact that the annual notification form was amended following the implementation of our new competence rules in February 2015. The latest version of the form can be found on our website at www.fca.org.uk/firms/markets/ukla/forms. Sponsors should submit their annual notifications on or after **4 January 2016** (the first business day in January next year) with the deadline for submission being **29 January 2016** (the last business day in January). It would be appreciated if sponsors could make their submissions by close of business on that date (5pm).

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 considering making further changes to this note to reflect the new strategic approach and structural changes that we announced on 8 December 2014. We expect to finalise the note or, if appropriate, reconsult, in the next edition of PMB.

Published guidance

We have made the following changes to the Knowledge Base, which we proposed in PMB No. 11:

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

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

Procedural Notes

UKLA/PN/907.2 – Block Listings

We received a number of responses seeking to clarify what we mean when discussing the management of net asset value (NAV). One respondent queried whether a board resolution is really a public document, but we wanted to give a few examples of the types of statements we would consider appropriate for these purposes without being restrictive. In addition, we note that we have been asked to consider extending 'permitted' block listing categories to include convertible loan stock or subscription shares. We do not think we need to provide additional guidance on this as these securities can be in scope – provided they meet the conditions laid down in the Listing Rules and this note. Accordingly, we are publishing this note in the form set out in PMB No. 11.

Technical Notes

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

We have made some small amendments to clarify the notes in response to feedback received.

Category: Closed-ended investment funds

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

In response to concerns raised by respondents to the consultation, we have amended the note to clarify the circumstances in which unusual termination provisions in a new applicant's investment management agreement may be a cause of concern for the UKLA in relation to agreeing eligibility for listing. We are not seeking to be prescriptive as to the terms in an investment management agreement that we consider would make a fund ineligible, and have clarified that this will be assessed in the light of the relevant circumstances, which include the fund's investment proposition. We are likely to pay particular attention to the provisions of investment management agreements that appear unusual in this context.

As a result of feedback received, we have also clarified our expectations regarding prospectus disclosure, as well as the role that disclosure plays in eligibility for listing decisions.

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

The responses to the consultation asked for clarification regarding the application of the guidance to different circumstances. We have amended the note to make it clear that we would not usually expect separate investment limits to be necessary where convertible shares, such as C shares, are issued and invested in a separate pool of assets – usually on a relatively short-term basis pending conversion into ordinary shares. We have amended the note to highlight that we would be concerned if there are permanent share classes that invest in discrete pools of assets that are not diversified.

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

This note received a generally positive response and we have made a few drafting changes based on the feedback. There was some concern expressed about the guidance proposed in the section on financing arrangements, and we have modified this to clarify areas where we have greater concern. In relation to the section on trading activity, we have consciously not provided specific examples of ineligible trading activities as the intention of the note was to highlight the types of factors we would consider at a high level, rather than to indicate the degree of trading activity that may or may not be acceptable, as this will vary depending on the circumstances. The note is designed to make our thought processes when we consider the eligibility of funds with non-traditional asset classes or strategies more transparent and, as such, should be considered as applying to LR15.2 generally.

UKLA/TN/409.1 – Master-feeder structures

In light of the feedback received, we have amended the note to clarify that it is addressing master-feeder structures and is not intended to question the use of subsidiaries, or other controlled special purpose vehicles, as holding entities for investments.

UKLA/TN/410.1 – Definition of ‘investment manager’

The vast majority of respondents did not comment on this Technical Note and, informally, stakeholders suggested this corresponds to current market practice. We received one response commenting that this guidance changes the definition of investment manager, rather than clarifies it. A change could only be effected as a result of a change in the definition, as the respondent highlighted. We have considered this feedback very carefully. Given, however, that the AIFM will always retain responsibility for portfolio management, we consider our Technical Note is a clarification rather than an extension of the definition. We have thus not proposed an amendment to the content of the note.

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

Category: Governance and conduct

UKLA/TN/206.1 – Approval of circulars

This note is now deleted as proposed in PMB No. 11.

Category: Transactions

UKLA/TN/303.1 – Circulars not requiring approval

This note is now deleted as proposed in PMB No. 11.

Category: Sponsors

UKLA/TN/701.2 – Sponsors: conflicts of interest

This note is published in the form set out in PMB No. 11.

Proposed guidance

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

- the amendment of one existing procedural note
- the reconsultation of one new technical note proposed in PMB No. 11, and
- the amendment of 14 existing technical notes

Here, we summarise our proposals.

Procedural Notes

UKLA/PN/904.2 – Public offer prospectus – Drafting and approval

We are proposing to amend this note to refer to Article 4(a) of the PD Regulation set out in PR 2.3.1.

Technical Notes

Category: Governance and conduct

UKLA/TN/209.2 – Listing Principle 2 – Dealing with the FCA in an open and cooperative manner

We are proposing to amend this note to reflect that LP 2 applies to all listed companies.

Category: Closed-ended investment funds

UKLA/TN/406.1 – Application of related party rules to funds investing in highly illiquid asset classes

We received extensive feedback on this draft Technical Note. The feedback highlighted that respondents have widely differing views about the basis on which issuers have been found eligible in the past, and in what scenarios purchases by an investment entity from a related party should be deemed ordinary course.

Notably, all respondents agreed with the overall proposition: that certain types of funds should not be subject to the disciplines of LR 11 when buying assets from their investment manager, and that, in certain instances, investors would not expect those protections to apply, although this only holds true in very specific circumstances.

In light of the feedback received, we have repositioned the draft Technical Note, and are reconsulting on the redrafted basis.

Category: Periodic financial information

UKLA/TN/503.2 – Equivalence arrangements for third country issuers

UKLA/TN/504.2 – Exemptions from the periodic reporting requirements

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

UKLA/TN/541.2 – Scope and application of vote holder and issuer notification rules

UKLA/TN/542.2 – Issuer's obligations

UKLA/TN/543.2 – Shareholder obligations

UKLA/TN/544.2 – Third country equivalent obligations

UKLA/TN/545.2 – Changes in holdings

UKLA/TN/546.2 – Voting rights that are disregarded for notification purposes

UKLA/TN/547.2 – Aggregation of managed holdings

UKLA/TN/548.2 – Market makers

UKLA/TN/549.2 – Asset managers

UKLA/TN/550.2 – Trading book exemption

UKLA/TN/551.2 – Aggregation of holdings

In March 2015, we published CP15/11, which set out our proposals to implement the Transparency Directive Amending Directive 2013/50/EU by making changes to the Disclosure Rule and Transparency Rules (DTR) sourcebook. We have now published our policy statement and set out the new rules. As a result, we are proposing to amend the 13 notes above to reflect the updated DTR. These technical notes relate to periodic financial information and disclosure of positions held by issuers, investors and management.

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:

Marta Alonso
UKLA Department
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Please send us your comments by 11 January 2016.

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 *Primary Market Bulletin*, see our website:

[PMB No. 11 guidance consultation](#)

[PMB No. 12 guidance consultation](#)

[PMB No. 12 finalised guidance](#)