

Primary Market Bulletin

Newsletter from the FCA for primary market participants

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About this edition

Welcome to the ninth edition of Primary Market Bulletin (PMB). We begin this edition with general news and information updates. We then go on to explain the changes we are making, and proposing to make, to the UKLA [Knowledge Base](#).

Importantly, we are publishing a new Technical Note in the Knowledge Base, which sets out our approach to non-equity prospectuses aimed at retail investors. We consulted on this guidance in PMB No.7 and generated significant stakeholder attention. We summarise below the [feedback received](#) and amendments made to the original note.

We are also proposing to amend some existing notes in the Knowledge Base. This edition sets out relevant background information and summarises the proposed changes. The full text of the proposed amended guidance is set out separately in the guidance consultation section of our [website](#).

What's new?

European updates

ESMA Consultation Paper

- The European Securities and Markets Authority (ESMA) published its consultation paper on *Draft Regulatory Technical Standards on prospectus related issues under the Omnibus II Directive* on 25 September 2014 [ESMA/2014/1186]. The consultation, which closes on 19 December 2014, deals with four areas: (1) approval of the prospectus; (2) incorporation by reference; (3) publication of the prospectus; & (4) dissemination of advertisements.

ESMA Questions and Answers on prospectuses

- ESMA published its 22nd update of its Questions and Answers on prospectuses on 22nd October 2014 [ESMA/2014/1279]. The new materials addressed issues related to summaries.

Restrictive measures against Russia

- On 1 August 2014 the Council of the European Union imposed restrictive measures in view of Russia's actions destabilising the situation in Ukraine. These were imposed by Council Regulation (EU) 833/2014 of 31 July 2014 (Regulation 833). Council Regulation (EU) 960/2014 of 8 September 2014 has amended Regulation 833 with effect from 12 September 2014. Article 5 of Regulation 833 as amended imposes restrictions on certain Russian banks, military equipment firms and oil firms. The full text of the restrictions is available in the EU's Official Journal.

UKLA thematic reviews – identifying areas of non-compliance

The UKLA has recently undertaken a thematic review of certain areas of the Disclosure and Transparency Rules and Listing Rules. We are concerned with the poor compliance of some market participants.

Transactions by persons discharging managerial responsibilities (PDMR) and their connected persons

As a result of our review, we have noted breaches of timeliness and content requirements regarding PDMR notifications (DTR 3.1.2R, DTR 3.1.4R and DTR 3.1.5R).¹ We have noted that PDMRs, connected persons and issuers have failed to meet these requirements.

These requirements, when complied with, establish a proper and timely flow of information to the market, increase investor confidence and create a level playing field for all market operators. Transparency of transactions conducted by PDMRs within issuers and, where applicable, persons closely associated with them, constitutes a preventive measure against market abuse. The publication of those transactions via an RIS can also be a highly valuable source of information to investors.

On some occasions, we saw instances where PDMRs had entered into arrangements with third parties in which the third party had agreed to make the required notification to the issuer on the PDMR's behalf. As a result of these findings, we are proposing amendments to our existing Technical Note: UKLA/TN/540.1.

In addition, there were a number of instances where connected persons of PDMRs were in breach of DTR 3.1.2R.

Where an issuer is premium listed, additional measures apply. Our rules (LR 9.2.8R) set out that a premium listed company must require every PDMR to comply with the Model Code (and take all proper and reasonable steps to secure their compliance). Paragraph 22 of the Model Code sets out the steps which a PDMR must take to fulfil their responsibility when a connected person deals.

We have issued a number of private warnings in respect of these failings. We are concerned that some market participants are not complying with DTR 3. So where we see breaches in this area, we will consider taking public disciplinary action, which could, among other outcomes, lead to public censure of the relevant party. The outcome in each case will depend on the seriousness of the breach.

¹ DTR 3-1 relates to transactions by PDMRs and their connected persons in respect of certain transactions conducted on their own account.

Seeking guidance from a sponsor

Another area of the UK listing regime where some premium listed issuers are not complying, is the requirement to obtain guidance from a sponsor when proposing to enter into a transaction, which due to its size or nature could amount to a class 1 transaction or a reverse takeover (LR 8.2.2R); or which is, or may be, a related party transaction (LR 8.2.3R). The purpose of this requirement is to ensure that issuers are obtaining guidance from sponsors on the correct application of the LRs, PRs and DTRs to the proposed transaction and, in particular, that transactions are correctly classified.

We have noticed that at times, issuers have failed to obtain the guidance of a sponsor, either because they have not realised the obligation exists or because they have undertaken their own analysis or assessment of possible relevant transactions or circumstances and do not believe it necessary to contact a sponsor.

The UK listing regime is complex in nature and the requirement to consult a sponsor ensures that all relevant rules are correctly applied. Where there is a possibility that a transaction could amount to a class 1 transaction or a reverse takeover, or may be a related party transaction, a premium listed issuer must obtain the guidance of a sponsor in accordance with LR 8.2.2R and LR 8.2.3R. The Significant Transactions and Related Party Transaction rules play an important investor protection role. As such, where a sponsor is not consulted, there is a risk that any subsequent shareholder protections are also not provided.

How to submit to the National Storage Mechanism: documents with multiple issuers

Since February 2014 we have had a simple procedure for you to use when submitting documents approved under the Prospectus Directive (PD) to the National Storage Mechanism (NSM). This helps us meet obligations to make notifications on our prospectus review operations to the European Securities and Markets Authority (ESMA) in a timely fashion.

Under the procedure, shortly after a document is approved under the PD, the main case contact receives an automated email from Morningstar (who operate the NSM on our behalf) with a link to their portal. If you are the case contact, you then need to open the link, upload the document and enter the date of approval to submit the document.

We are making a small change for documents that have been jointly produced by more than one issuer. The main case contact will now receive a separate automated email for each issuer from the portal and they will be required to upload the same document for each issuer onto the portal.

After a document has been uploaded, it appears on the National Storage Mechanism within two hours. The uploading portal is only for documents approved by the FCA under the PD and not for other documents.

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

Consultation feedback and changes to the Knowledge Base

Ongoing guidance review

Guidance presented for consultation in PMB No.8

We are considering the feedback we received on the consultation in PMB No.8 (August 2014) and we intend to respond to it in the next edition of PMB.

Sponsors

In PMB No.7, we consulted on a new Technical Note (UKLA/TN/713.1), addressing sponsors' obligations under the Listing Rules to deal with the FCA in an open and cooperative way. We are still considering the feedback received and we expect to be in a position to finalise this Technical Note or, if appropriate, re-consult, in the next edition of PMB.

Published guidance

Technical Note

Category: Prospectus content

UKLA/TN/632.1 – Non-equity prospectuses aimed at retail investors

In PMB No. 7 we proposed new guidance applying to issues of bonds aimed at retail investors. The proposed guidance was designed to help practitioners preparing prospectuses in relation to such transactions. In particular, it addressed the Prospectus Directive requirement that a prospectus should be 'easily analysable and comprehensible', taking into account the needs of the end investor.

We did so because retail bond markets are new in the UK. Our bond markets have been almost exclusively sophisticated institutional markets since the 1960s. However in the last few years there has been considerable interest in the prospect of bond markets encompassing retail investors becoming a significant part of the retail investment landscape for the first time since then. But, these new retail bond markets were developing on an assumption that the conventions of prospectus disclosure that had evolved in institutional bond markets would be sufficient for the new retail markets. We felt it was unlikely that most retail investors would be able to navigate or understand a wholesale bond prospectus. We also felt that if these new markets are to be established successfully on a sustainable long term basis this would need to be addressed.

We received 10 responses to our proposed guidance plus informal feedback through other channels. We are most grateful for participants' feedback. Respondents generally agreed with the principle of clear disclosure underpinning the guidance. However, although there was agreement at this level, respondents did nonetheless have concerns about some of the detail of the proposed guidance.

One group of respondents argued that the threshold we proposed using to define which deals should be within the scope of our approach could unintentionally catch some purely wholesale deals. We originally proposed the approach should apply to prospectuses published in relation to issuances of bonds with a denomination of less than €100,000. Respondents argued there are numerous deals where bonds with a denomination under this threshold are offered solely to wholesale investors. Respondents within this group also fed back concerns that the guidance was unclear.

In response to this feedback we have narrowed the scope of the guidance so that it no longer applies to all prospectuses that relate to low denomination securities (i.e. with a denomination of less than €100,000). Specifically it will not apply to prospectuses which relate to the admission to trading on a regulated market of low denomination securities where the prospectus makes an 'exempt offer' to qualified investors² only, unless the securities are to be admitted to trading on a regulated market or a segment of a regulated market which is marketed at retail investors, for example the London Stock Exchange's ORB market. This means the guidance will apply to all public offers of low denomination securities. This also means the guidance will apply to all admissions to the ORB. As before, our guidance will not apply to prospectuses for high denomination securities with a denomination of at least €100,000. In making this change, we are narrowing the approach but we are doing so in a way that ensures the implementation of the initiative is reconcilable with the policy's original aim.

In response to feedback received, and with the assistance of practitioners, we have sought to improve the guidance, adding additional material and clarifying certain sections of the Technical Note. This should address concerns from practitioners that aspects of the guidance were unclear and should contribute to the goal of ensuring that practitioners putting together retail bond prospectuses have a much better understanding of what is meant by 'easily analysable and comprehensible'.

Another group of respondents were concerned that our approach may prevent or hinder the growth of the London Stock Exchange's ORB market. This group were concerned that the approach would exacerbate a cost differential between the ORB and existing wholesale markets, causing the larger high quality issuers who have the ability to access either market to focus solely on wholesale markets. This group pointed to the wider consequences of a failure of the ORB market to thrive, including the loss of a possible additional source of growth capital, the loss of an additional option for issuers to diversify their funding, and the loss of an opportunity for small scale investors to continue to directly invest in corporate bonds without recourse to bond funds (while still diversifying). They also argued retail investors did not read prospectuses.

We have reflected carefully on this feedback. Having met participants in the consultation and held discussions with practitioners, we have decided that despite concerns that the approach may impact the ORB market we should finalise the guidance broadly as we proposed, but subject to the two changes we have outlined above.

This is because we continue to believe this initiative is an important contribution to the goal of ensuring these new markets are established on a long-term sustainable basis. One aspect of a sustainable market is participants have access to reliable, verified information in a format they can understand. The prospectus regime aims to give investors that. Consumers will not read documents they cannot understand.

We have spent a lot of time reflecting on the feedback we received on costs. The view that making retail bond prospectuses more easily analysable and comprehensible adds cost assumes a cost baseline based on wholesale prospectuses. We do not share that assumption.

² As defined in section 86(7) of FSMA.

The requirement that prospectuses should be easily analysable and comprehensible for their target audience is a legal requirement that has been in force since before retail bond markets reappeared in the UK.

We hope that the costs of producing a retail prospectus will decrease as law firms adjust to the approach. Already in the retail bond transactions that have gone through since the consultation launched we have found drafts of the documents clearer and easier to navigate, which has reduced the number of comments we have had to make and drafts we have had to review. This would likely have impacted on the amount of associated legal costs and the time taken to gain approval. We hope this process of adjustment will continue. For example, we would anticipate that legal advisers will develop template wording to describe in words target investors would understand the various technical features of bonds which are relatively generic – for example wording explaining terms such as ‘secured’, ‘subordinated’ or ‘structural subordination’. This could reduce the time and expense taken to draft prospectuses. As another example, for issuers that have already published high denomination base prospectuses, a draw down prospectus (which would incorporate by reference information from the high denomination base prospectus) could be used for offers of low denomination bonds to retail investors.

However, although we hope costs can be reduced, if over time legal services markets really cannot drive costs lower and retail bonds issuances (which are often relatively small) turn out to be uneconomic at that level, it would not be the right approach to lower investor protection until the market becomes economic. Retail bond markets will not be sustainable on that basis.

As we said in PMB No. 7, investors are consumers under the revised Financial Services and Markets Act. The FCA – when acting as the UKLA as in any of its capacities – has the objective of protecting consumers. The review of prospectuses is one of the ways in which the FCA advances its consumer protection objective. But it is important that practitioners preparing the prospectuses and engaging with us through the review understand this process. Hence we think this guidance will help practitioners and contribute to making the retail bond markets sustainable in the longer term.

Proposed guidance – your chance to have your say

We are consulting on proposed amendments to a number of Technical Notes. These are summarised below.

We want to hear what you think. Please send us your comments by 12 January 2015.

Please send comments by email to primarymarketbulletin@fca.org.uk.

Alternatively, send comments in writing to:

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

Subject to the feedback we receive, we intend to publish this guidance in the Knowledge Base in due course.

Technical Notes

Category: Governance and conduct

UKLA/TN/204.2 – Ratification circulars

UKLA/TN/204.1 provides guidance on ratification circulars, and the circumstances in which such proposals could be viewed, and should be treated, as related party transactions under LR 11.1.5R(3). We are proposing to amend and clarify certain aspects of the existing guidance because we are concerned that advisers may not be interpreting this guidance correctly.

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

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

As indicated above, we are proposing new guidance as a result of the UKLA's recent thematic review work. We have seen instances where PDMRs have entered into arrangements with third parties in which the third party agreed to make the required notification to the issuer on the PDMR's behalf. As a result of our findings here, we are proposing amendments to our existing Technical Note: UKLA/TN/540.1.

Category: Transactions

UKLA/TN/305.2 – Hostile takeovers

We are proposing to amend UKLA/TN/305.1 to remove references made to the Listing Rule requirement for a premium listed issuer to have to prepare a 28-day circular which was deleted with effect from 1 October 2014. No substantive changes have been otherwise proposed.

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. 7 consultation](#)

[PMB No. 8 consultation](#)

[PMB No. 9 consultation](#)

[PMB No. 9 published guidance](#)