FINANCIAL CONDUCT AUTHORITY

~~UKLA~~ Primary Market Technical Note

Aggregating Transactions

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.

UKLR 7~~10~~.2.11R~~0~~

The aggregation rules are a key component in the system of ~~shareholder protections~~disclosure requirements provided in UKLR 7~~10~~. ~~These safeguards are necessary because of the impact that acquisitions and disposals can have on a company.~~ Whilst this note discusses the aggregation requirements in UKLR 7, the same principles in this guidance note apply to aggregation requirements for related party transactions in UKLR 8.

UKLR 7~~10~~ requires transactions to be classified according to relative size and sets out rules requiring disclosure appropriate to the size of the ~~deal~~transaction. Specific disclosure requirements apply for significant transactions by commercial companies. Shareholder approval is required for ~~substantial transactions~~reverse takeovers. In that case, ~~Where the transaction is classified as a reverse takeover,~~ the enlarged entity emerging from the transaction is effectively a different business and is treated as a new applicant for listing. Shareholder approval is also required for significant transactions by closed-ended investment funds under UKLR 11.5.2R.

UKLR 7.2.11~~10.2.10~~R states that, when classifying a transaction under UKLR 7~~10~~, ~~the UKLA must require~~ other transactions completed in the previous 12 months must ~~to~~ be aggregated with the one being classified in the circumstances set out in the rule (see below). ~~This could mean that the current transaction being classified will be treated as a class 1 transaction, for example, even though on its own it is relatively small~~The requirements in UKLR 7.3 (Significant transactions) will then apply tin respect of the aggregated transactions as a whole.

Normally, as the rules make clear, ~~the UKLA will only aggregate~~ transactions only need to be aggregated in defined circumstances. These circumstances are set out in UKLR 7.2.11~~10.2.10~~R(1)~~(a)-~~(3)~~(c)~~. UKLR 11.5.3R sets out additional requirements for closed-ended investment funds. However, UKLR 7.2.14~~10.2.11(~~G~~)~~ provides the ~~UKLA~~ FCA with scope to apply aggregation principles if necessary in circumstances other than those specified in UKLR 7.2.11R.

~~The UKLA~~ We would typically rely on UKLR 7.2.14G to apply aggregation principles ~~employ these~~ where ~~they had~~we have concerns that an issuer was structuring a transaction in such a way as to avoid, under UKLR 7, the disclosure requirements for significant transactions or shareholder approval of a reverse takeover~~shareholder approval under UKLR 710~~.

The aggregation rules are necessary to close possible loopholes and anomalies. Without them, transactions that would otherwise be significant enough to be subject to the disclosure requirements for significant transactions or require shareholder approval could be split into a series of smaller transactions. This scenario is addressed in UKLR ~~10.2.10R(1)(a) and (b)~~7.2.11R(1) and (2). Where these circumstances apply, the transactions are required to be aggregated for classification purposes.

UKLR ~~10.2.10R(1)(c)~~7.2.11R(3) addresses a slightly different anomaly. Without the aggregation rules, an acquisition of a substantial new business which leads to involvement in a significant new business activity would be subject to the significant transactions disclosure requirements or shareholder approval and circular requirements (for closed-ended investment funds ~~and shell companies~~), whereas if the new business was assembled through a series of smaller third party acquisitions with the same effect, it would not. UKLR ~~10.2.10R(1)(c)~~7.2.11R(3) applies in such a case.

Similarly, without the aggregation rules, a very substantial acquisition of an unlisted business or assets might be classified a reverse takeover, whereas a series of smaller transactions might not, even though the business emerging from these deals is effectively a different business. Again, UKLR ~~10.2.10R(1)(c)~~7.2.11R(3) would apply.

How do we aggregate transactions?

The requirement to carry out the class tests crystallises at the point at which the transaction is announced. As such, the impact on the issuer in relation to the market capitalisation test is measured at that point in time. UKLR 7~~10~~ Annex 1 sets out the source figures to be used in classifying transactions.

When aggregating transactions, issuers should add together the class test percentages of the earlier completed transaction (as classified at that time) with the class test percentages of the subsequent transaction. The combined percentage will indicate the aggregated classification of the transactions.

For example, Company A enters into and completes a transaction in January and a second transaction in May of the same year. Both are in relation to the same business and are aggregated under UKLR ~~10.2.10~~7.2.11R(2~~1~~)~~(b)~~. The class test results are:

	January	May	Aggregated results
Consideration to market cap	15%	15%	30%
~~Profits test~~	~~10%~~	~~4%~~	~~14%~~
Gross assets	13%	7%	20%

On the above results the second transaction would be treated as a ~~class 1~~significant transaction requiring the publication of a RIS ~~shareholder approval~~ under UKLR ~~10.2.10R(3)~~7.3.1R, or if Company A is a closed-ended investment fund, shareholder approval under UKLR 11.5.2R as the aggregated results are greater than 25% for one of the three tests.

It would not be appropriate to recalculate the class test results for the January transaction in May, as we consider that the class test regime seeks to measure the impact of a transaction on an issuer. This impact crystallises at the time a transaction is entered into, and is not affected by subsequent events such as a movement in an issuer's share price.