

The UK Debt Market Forum

Practical measures to improve the effectiveness of UK primary listed debt markets

A report by the Financial Conduct Authority

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April 2016

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Foreword

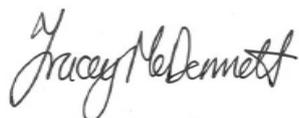
By Tracey McDermott, Acting Chief Executive Officer

When I announced the creation of the UK Debt Market Forum in a speech at the Association of British Insurers (ABI) last November, I noted the importance of deep, liquid, well-functioning capital markets to the wider economy. As we look to move on from the crises of recent years, these markets will have a central role to play in supporting sustainable economic growth. This is a core driver of the EU Commission's action plan for capital markets union. Alongside this, it is equally crucial to assess the effectiveness of the UK's domestic primary capital markets. That is why the FCA is embarking on a broad-ranging review of the UK listing regime, another initiative announced in my speech to the ABI, and in particular why we established and chaired the UK Debt Market Forum.

One of the tasks of the FCA in wholesale markets is to identify where improvements to those markets need to be made and to drive their delivery. This involves engaging with practitioners, and listening to their views, in order that we can understand how such improvements can be made in partnership with the industry. The Forum is a great example of this, and therefore we are pleased to be in a position to present this report.

The Forum has successfully brought together and drawn upon the collective wisdom of a wide range of parties, representing issuers, investors, exchanges, advisers and policy-makers. Our common goal was to identify practical measures to enhance the UK's primary debt markets. Following a series of constructive meetings, this report sets out our findings from the Forum.

In acknowledging the combined knowledge convened in the Forum, I also wish to thank all of the individuals and organisations they represent for providing their time and expertise. I am hugely encouraged by their willingness to make themselves available for this FCA initiative, just as I hope that they and the markets as a whole will be encouraged by the work performed by the Forum and the plans set out in this report.



1. Overview

- 1.1** In November 2015, we began a series of meetings with a specially convened group of stakeholders in UK primary debt capital markets, the UK Debt Market Forum. The Forum brought together a wide range of experts from these markets. Its aim was to gain these experts' feedback and views in developing a package of practical measures which we and market practitioners could adopt to make a tangible positive impact on the effectiveness of the UK's primary listed debt markets, without reducing the existing high standards for which UK primary markets are known.
- 1.2** The Forum's focus was on the UK's wholesale listed debt markets. Wholesale debt capital raisings make up one of the largest single financial asset classes globally; the world's largest companies and agencies undertake the majority of their capital funding with institutional investors in this way. The wholesale market is characterised by frequency, size and speed of execution. It provides issuers with a critical source of liquidity which (as past events have illustrated) is not readily replaceable by other means, and the buy-side – including pension funds, insurance companies and monetary authorities – with a supply of diversified, investible assets. Nearly 80% of the number – and a substantially even greater proportion by volume – of listed debt securities on the FCA's Official List are issued into the wholesale markets. Accordingly, and notwithstanding our ongoing participation in discussions on how to foster and promote retail involvement in debt markets, the smooth functioning of the listed wholesale sector remains a priority for the FCA.
- 1.3** We are, among other things, the UK's listing authority, responsible for the review and approval of prospectuses produced in relation to securities issuances, and the maintenance of the Official List of listed securities. This gives us an important role in UK securities markets, including the debt markets. Our objectives include protecting and enhancing the integrity of the financial system, which covers the orderly operation of financial markets. For the reasons noted above, we think there is a clear link between this objective and the important role played by the debt capital markets in the domestic and global economies. We seek to ensure, consistent with our statutory objectives, that these markets function as well as possible. We keep this under continual review and seek constant improvement.
- 1.4** This report outlines the measures we will take as a result of our recent engagement with market participants. It highlights developments in primary debt markets the Forum considered and the issues it discussed. It lays out the proposed package of initiatives which have been developed by us with input from the participants of the Forum, and which will now be put in place to achieve the aims of the Forum.

Membership of the Forum

1.5 The Forum was comprised of market participants representing issuers, investors, advisers and relevant UK exchanges, as well individuals from the FCA, the Treasury and BIS:

1.6 The membership of the Forum is set out below¹

FCA

Marc Teasdale, Director, Market Oversight Directorate
Clare Cole, Head of Department, UK Listing Authority
Edwin Schooling Latter, Head of Department, Market Policy

Government

Jonathan Edwards, HM Treasury
Matt Wickes, Department for Business, Innovation & Skills

Industry

Amanda Thomas, Allen & Overy LLP
Louise Kelly, Barclays plc
Neil Wadey, British American Tobacco plc
Duncan Kellaway, Freshfields Bruckhaus Deringer LLP
Jill Kwan, ISDX plc
Richard Levy, Linklaters LLP
Iain Jones, Lloyds Banking Group plc
Denzil Jenkins, The London Stock Exchange plc
Malcolm Cooper, National Grid plc
David Hopkins, The Royal Bank of Scotland plc

Trade Associations

Hugh Savill, Association of British Insurers
Nicky Edwards, The City UK
Charlotte Bellamy, International Capital Market Association
Galina Dimitrova, The Investment Association

1.7 When considering the composition of the Forum, we were keen to strike an effective balance between ensuring that there was a broad representation of the industry, whilst also a sufficiently small group to be effective in formulating ideas and initiatives on a relatively short time-scale.

1.8 We also discussed the Forum's agenda with and are very grateful for the input received from our Listing Authority Advisory Panel (LAAP) as well as other market participants. During February and March 2016 we held a number of further bilateral meetings with these stakeholders and this report also reflects the issues highlighted during these meetings.

¹ Alternates for some members attended some of the sessions.

How the Forum operated

- 1.9** The Forum was chaired by Marc Teasdale, Director of Market Oversight at the FCA. Its meetings covered a number of topics identified by the Forum's membership as particularly important to the operational effectiveness of UK primary listed debt markets. The meetings operated under the Chatham House Rule². FCA staff provided the secretariat.

The recommendations in this report

- 1.10** This report and its recommendations have been arrived at through the constructive dialogue of the Forum. We are hugely grateful to all participants in the process for their time and energy. However, ultimately we are responsible for the content of this report and the delivery of the changes it sets out. As a result, they now appear under our name.
- 1.11** The report that follows is organised into the following parts:
- 1.** The **Overview** section summarises the debate and captures the key points that were raised during the meetings of the Forum. The remainder of the document outlines the package of measures we will be implementing in response.
 - 2. Extension of our 'Wholesale Debt Approach'** explains plans to expand an existing initiative which has streamlined the review of wholesale debt documents.
 - 3. Extension of our 'Same Day Service'** sets out how we intend to handle virtually all 'routine' supplemental prospectuses and listing particulars on the day they are submitted to us.
 - 4. New guidance on omitting guarantor financial information** explains a proposal to consult on new guidance on an important area identified by Forum participants.
 - 5. A new engagement strategy** sets out how we aim to improve dialogue with market participants.
 - 6. Our new 'Early Engagement Team'** sets out a new initiative aimed at providing targeted services to prospective overseas issuers considering listing debt in the UK.
 - 7. Further enhancements** sets out various other improvements developed in light of the Forum's input.
 - 8. Multilateral trading facilities** discusses the idea of enhancing the UK's debt market offering with one or more new UK wholesale debt multilateral trading facilities.
 - 9. Implementation** explains when the measures in this report will be put in place, and where further details of its proposals will be set out.

² The Chatham House Rule provides that members' views will not be individually identified. Nor are members strictly bound to expressing the views of their respective organisations. Accordingly, it encourages free and open discussion, and this is why we chose to run the Forum under this approach.

The Forum's key areas of focus

- 1.12** The Forum aimed throughout to harness the practical experience of its members to develop the tangible measures that comprise the package set out in this report. In order to identify these measures, the early sessions of the Forum sought to explore perceived problems with the UK debt listing regime.
- 1.13** In doing so, members had an international perspective, and in particular drew on their comparative experience of listing debt in different EU financial centres. Members focused on issuer choice, the premise being that issuers choosing financial centres other than the UK could be an indicator of the effectiveness of the UK market. And in considering this, members paid regard to ESMA prospectus approval data showing the UK's share of total prospectus approvals (across debt and equity) to be declining.

Year	2007	2008	2009	2010	2011	2012	2013	2014
Prospectuses approved	10,389	6,900	4,912	4,788	4,453	4,121	4,011	3,931
FR	268	153	222	320	324	484	357	394
DE	700	585	442	493	409	364	396	377
IE	2,797	1,279	680	508	568	539	627	631
IT	1,161	798	705	584	541	362	264	241
LU	1,823	1,393	668	640	630	606	736	722
UK	1,515	1,200	852	947	764	658	477	471
Other	2,125	1,492	1,343	1,296	1,217	1,108	1,154	1,095

Year	2007	2008	2009	2010	2011	2012	2013	2014
Share of prospectuses approved by jurisdiction	10,389	6,900	4,912	4,788	4,453	4,121	4,011	3,931
FR	3%	2%	5%	7%	7%	12%	9%	10%
DE	7%	8%	9%	10%	9%	9%	10%	10%
IE	27%	19%	14%	11%	13%	13%	16%	16%
IT	11%	12%	14%	12%	12%	9%	7%	6%
LU	18%	20%	14%	13%	14%	15%	18%	18%
UK	15%	17%	17%	20%	17%	16%	12%	12%
Other	20%	22%	27%	27%	27%	27%	29%	28%

Source: ESMA

- 1.14** Members acknowledged that this data, which includes equity transactions and focuses only on numbers of documents (as opposed to actual issuance), is an imperfect proxy for either 'market share' of the European debt market or for the effectiveness of any one member state's processes. Nonetheless members thought the numbers are still of some relevance to the question of whether issuers are choosing EU financial centres other than the UK to list debt.
- 1.15** Early sessions of the Forum sought to explore why this may be the case. Four interconnected themes were identified as relevant and formed the bulk of the discussion at subsequent sessions:
- The accessibility of competent authority staff and the service standards provided by the competent authorities of various jurisdictions.
 - The application of the Prospectus Directive (PD) in practice (including differing approaches to when information may be omitted from a listing document).
 - The distinction between PD and non-PD markets and the availability and structure of non-PD markets.
 - The respective roles of competent authorities and exchanges in promoting their financial centre.
- 1.16** Each of these is considered in further detail below.

The key themes

Accessibility and service

- 1.17** The issues of accessibility of our UKLA Department staff and the service the department offers were an important discussion point in the early sessions of the Forum. Forum members almost all agreed that the accessibility and service levels had improved appreciably of late, and that further such progress would be welcomed. This followed a period of uncertainty and disruption during 2012-13, around the time of the 'PD2' reforms to the Prospectus Directive regime and the cutover between the FSA and FCA. During this period, some members said, issuers considered moving their debt issuance programmes to other EU financial centres.
- 1.18** In contrast, more recently most Forum members have found that service levels are comparable with other European centres – though occasionally, some members said, we appear more bureaucratic than these other centres.
- 1.19** Nonetheless, it was agreed that more can and should be done and some useful guiding principles emerged from these discussions:
- **Consistency:** The Forum agreed that market participants value regulatory consistency most highly. This is in two contexts in particular; the confidence that they will get the same answers to the same questions irrespective of whom they speak to within an authority, and the confidence that new challenges will not be raised late in a review process.

- **Accessibility:** The availability of our UKLA Department staff to discuss transactions and possible approaches to problems is valued significantly by Forum members, and we should devote further efforts to ensure we are perceived to be consistently available. The reduction in scope of our Helpdesk service in 2011 was discussed and was thought by members to be symbolic of a change in service levels. Many thought this had sent a negative message to market participants, and resulted in a subsequently difficult-to-shift perception that we were not as 'open for business' as other authorities and that market participants were to be kept at arm's length. While Forum members acknowledged that it was not our intention to limit access to our staff, and we had already been working to address this, they consider that additional steps should be taken to correct this perception.

For complex deals, Forum members emphasised how market participants value the ability to speak to someone early on in the process to enable significant issues to be addressed prior to submission. This can be particularly relevant where an issuance window is tight, or where market volatility raises uncertainty.

- **The review process:** Forum members said market participants particularly appreciate understanding the underlying concerns driving issues raised by competent authorities, because this enables quicker resolution. A dialogue that takes place largely through written correspondence is not conducive to this. They appreciated therefore the existing ability to call a named contact and urged us to continue to make our UKLA Department staff available, particularly regulatory decision makers. There was also discussion of the technology we use to deliver comments on draft documents. Most Forum members with experience of this thought the technology was out of date and the process difficult, particularly relative to other centres.
- **Speed vs predictability:** We, in common with some other EU authorities, are committed to meeting published turnaround times for the review of draft debt documents which are well inside those set out in the PD. The Forum discussed whether these could be further decreased. The Forum agreed however that it was more important to focus on the 'end-to-end' review process, to ensure that approval would proceed in a predictable and efficient way, and (where practicable) would be sufficiently flexible to meet urgent business needs.

The application of the Prospectus Directive in practice

1.20 The Forum also considered carefully whether perceptions about differences in the approaches of various competent authorities really boiled down to 'service issues' or whether they also reflected matters of regulatory substance, that is to say an authority making a determination under its prospectus rules with which a market practitioner disagrees.

1.21 In general, there was judged to be a significant degree of consistency among member state authorities. However, it was thought by some Forum members at least initially, that some differences may exist in relation to approaches taken to derogations. A starting point for this part of the discussion was Forum members' general perception that certain competent authorities were more likely to grant requests to omit certain disclosure requirements, and at times responded more quickly to such requests.

1.22 These ideas were a focus for more detailed examination of this issue. Two particular themes subsequently emerged from these parts of the Forum discussions:

- Ultimately, only one area was identified where our current approach to derogations differs from other EU competent authorities. This enabled the Forum to identify one of the main components of the final package, the proposed new approach to omission requests for financial information of guarantors set out in part 4 (New guidance on omitting guarantor financial information) of this document.
- This area aside, and as discussed below under ‘PD and non-PD markets’, the perception that the UK does not readily grant requests to omit information required under the Prospectus Rules might be affected by the conflation of EU Regulated Markets with exchange-regulated multilateral trading facilities (MTFs).

PD and Non-PD markets

1.23 A key development in EU wholesale debt markets in recent years has been the emergence of exchange-regulated platforms constituted as MTFs under European securities law. Examples of these markets include the Irish Global Exchange Market (GEM) and Luxembourg’s EuroMTF. As the statistics in part 8 (Multilateral trading facilities) of this report suggest, these now attract significant amounts of issuance. Unlike the main EU ‘Regulated Markets’ (RMs), the PD does not apply in relation to admissions to MTFs.

1.24 The Forum agreed this development is significant. It was thought that for issuers the difference in disclosure obligations could sometimes be material. However, it was noted that some market participants, including investors and advisers, were often only vaguely aware of the distinction between PD and non-PD markets.

1.25 The lack of awareness of this distinction is significant. It appears in some cases, when we are being compared with other financial centres, it is not understood that the comparison being made is not between two EU authorities operating under the same harmonised legislative framework, but between an EU competent authority on the one hand (i.e. the FCA) implementing a suite of EU legislation, and a local exchange operator applying its own rules on the other.

1.26 As a result, the Forum discussed these developments at length. In particular it reflected on whether the lack of a major MTF platform is a potential gap in the UK’s market structure, and if so and what can be done to rectify it. These ideas are discussed below in part 8 (Multilateral trading facilities).

Marketing and the proper role of the Authority

1.27 Finally, the Forum discussed the proper role we and market participants should play in marketing debt listings.

1.28 Certain European exchanges are seen to be notably active in their marketing activities, which encompass conference attendance and sponsorship, and tailored marketing based on established individual relationships with issuers and advisers. A number of Forum members thought there was scope for greater UK promotion along these lines.

1.29 The Forum agreed the UK regulated debt listing regime is characterised by a ‘kite-mark’ of high standards. Beyond this, there was broad consensus that the Forum’s package of measures provide a credible basis to support the promotion of the UK as a debt listing venue and address certain historic negative perceptions.

1.30 In terms of how such promotion should occur, Forum members considered that our recent market engagement initiatives have been positively received, and that we should consider ways to continue to make and maintain contact with issuers and arrangers. Nevertheless, there was acknowledgement that the marketing of the UK as a debt listing venue sits with commercial market participants and other government and trade bodies - not with the FCA as a regulator - and that the clear separation between our duties and objectives and those of these other parties should be preserved.

1.31 Given our regulatory role and statutory objectives, we are not and should not be engaged in actively finding applications for UK debt listings. We do however have a responsibility for ensuring the UK debt market works efficiently for the benefit of its participants, and the way we discharge our duties and services can influence market function. A regulatory environment which preserves high standards, while being accessible and predictable, is one which market stakeholders can promote as one of the UK's strengths. The development of the Early Engagement Team, our new engagement strategy and the other measures described in this report are an expression of the Forum's ideas in this regard.

Building on success: the Forum's approach to identifying its recommendations

1.32 While the Forum's participants volunteered various constructive ideas to further enhance the UK's debt listing regime, the general sentiment of the Forum was that over the last couple of years the experience of issuing listed debt in the UK has already improved significantly. Several of the newer enhancements to our service offerings were singled out for attention.

1.33 It was this spirit that provided the inspiration for most of the recommendations eventually arrived at. Forum members asked: what works well? The measures set out in this report seek to build on successes. In many cases those successes are recent measures we have already taken, which can be built on and expanded. In other cases they are successes that have been observed in other EU financial centres.

1.34 The key measures the Forum recommended and which we will be implementing are explained in the remainder of this report. Those measures are:

- An extension of the scope of our 'Wholesale Debt Approach' to reviewing a wider range of wholesale debt documents.
- Expanding the range of supplements to which we will apply our 'Same Day Service'.
- A proposed new guidance note on omitting the requirement to provide historic financial information on guarantors.
- A new engagement strategy designed to make our UKLA Department staff more accessible to DCM practitioners.
- An 'Early Engagement Team' designed to help prospective overseas issuers understand the PD regime.
- Various other service enhancements.

1.35 In addition, the role of MTFs in the UK debt market is discussed in part 8 (Multilateral trading facilities). As we explain in that section, we propose that this important issue will continue to be considered as part of our broader review of the UK listing regime taking place later this year.

Ideas the Forum did not to pursue

1.36 The Forum also considered a range of possible measures which ultimately it decided not to recommend. The main examples of these are:

- **Decreasing comment turnaround times:** Whilst shorter comment turnaround times during listing reviews were discussed, ultimately there was no consensus for such a measure; rather, Forum members value an approach based on consistency, accessibility and a highly focused approach to review of the document. Greater importance is placed on predictability and 'end-to-end' review time than more granular comment deadlines.
- **Listing agents:** Some EU centres feature the use of specialist advisers called listing agents to advise companies on the preparation of listing documentation and the accompanying listing application. The Forum declined to recommend the adoption of a similar approach in the UK, and favoured retaining the relative simplicity of the jurisdiction's current model over introducing additional parties to the listing process.

2. Extension of our ‘Wholesale Debt Approach’

We are significantly expanding our Wholesale Debt Approach to cover the large majority of debt documents we review, including for the first time, for example, issuance of asset-backed and covered bonds. Experience has shown that the approach maintains regulatory standards, but simplifies and speeds up the listing process – both in terms of individual rounds of comments and ‘end-to-end’ review time – and thereby reduces costs associated with it. We will more intensively focus our resources on the scrutiny of the riskiest types of securities, in a manner which is transparent and well-understood by market participants.

- 2.1 The Wholesale Debt Approach is a risk-focused methodology designed specifically for the review of wholesale debt documents and aimed at ensuring that we target resource at key areas of risk. As an organisation we have a longstanding practice of focusing on areas that pose a higher risk to our objectives. In wholesale debt markets, the effect of the approach is often a faster review process with fewer rounds of comments, whilst maintaining appropriate regulatory standards.
- 2.2 The approach was developed in 2013, following consultation with a number of market participants representing both investors and issuers. It was introduced in late 2013 and initially focused on a limited range of documents. Stakeholders’ feedback and retrospective assessment of the work we have carried out has been very helpful to us in assessing its effectiveness. We are confident that it achieves appropriate regulatory outcomes in cases where it is applied. It has also been positively received by practitioners. Forum members particularly identified the Wholesale Debt Approach initiative as a recent enhancement which worked well.
- 2.3 As result we now have sufficient evidence to support an extension of scope so that many more documents can be treated in this way without lowering regulatory standards.
- 2.4 The basis of the extension will be that almost all wholesale debt documents will fall within the new enlarged scope of the Wholesale Debt Approach, with the principal exception being standalone documents involving the issuance of UK financial institutions’ regulatory capital. This means we will, for example, now include routine renewals of UK banks’ programme documents within the Wholesale Debt Approach. However, we wish to run a more intensive process on standalone documents involving the issuance of UK-supervised financial institutions’ regulatory capital. This is because such deals are likely to be balance sheet strengthening exercises conducted in dialogue with us (beyond our UKLA Department’s role) and the PRA, and are likely to require greater scrutiny.
- 2.5 We would also reserve the right to exclude other unusual or high risk wholesale debt documents in exceptional circumstances, though we currently anticipate this discretion being very rarely exercised.

- 2.6** Finally, as the name suggests, we do not propose to extend the approach to bona fide retail issuance (including, for example, public offers of structured products). Although most of the measures set out in this report are intended to be for the benefit of the UK listed debt markets overall, the Wholesale Debt Approach is tailored specifically for the wholesale sector.
- 2.7** These changes mean the great majority of debt documents we review will therefore be within the scope of the Wholesale Debt Approach. Criteria which previously disqualified a document from the Wholesale Debt Approach will cease to apply, and we will no longer carve out, for example, any issuance by UK financial institutions, or documents accompanied by non-standard variation requests or containing expert reports.
- 2.8** The large proportion of documents we review in connection with asset-backed and covered bonds will also now fall within the scope of the Wholesale Debt Approach, which we expect will have noticeable impact among market participants.

3. Extension of our ‘Same Day Service’

We currently review approximately 500 supplementary debt disclosure updates a year, and we are expanding the service by which we review and approve such documents within a single day (SDS) from around a third to virtually all of them. In addition to cost savings for issuers and their advisers, this should foster and incentivise more timely dissemination of important information to investors.

- 3.1** Our Same Day Supplement (SDS) service reviews and approves certain ‘in scope’ supplementary documents on the day they are submitted. It is a feature of our offering on which feedback is positive. In line with the Forum’s approach of recommending doing more of what we do well, we will extend the scope of this service such that it will be available to virtually all (we estimate over 90% of) debt supplements.
- 3.2** Clearly, the provision of this service relies on the accurate preparation and timely submission of supplements. The service was developed and works well for supplements of a ‘routine’ nature, which when first submitted to us are very often already in a form which means we are not required to raise comments regarding their content.
- 3.3** Equally, its value rests on predictability and clarity over whether we will be able to grant our approval on a same-day basis. There will be limited types of supplements which we do not expect to be able handle in this manner – those exceeding 5 pages in length or requiring new PD annex disclosures. Our experience suggests documents of this nature represent only a small proportion (under 10%) of all supplemental publications, but they are more likely to involve complex or numerous disclosure changes, which in turn increases the likelihood that we may require more than a day to review them or need to raise substantive comments. We will communicate directly and promptly with submitters where this is the case.

4.

New guidance on omitting guarantor financial information

We are launching a public consultation relating to a new and more transparent approach to assessing whether certain types of financial information may be omitted from debt listing documents. Adoption of this will bring our approach further into line with other European authorities, provide issuers and their advisers with greater predictability in terms of the listing process, and should result in more simplified and stream-lined listing documentation in a format which investors may more easily analyse.

- 4.1** Another significant theme of the Forum sessions has been the issue of derogations from prospectus requirements. This refers to occasions where an applicant seeking approval of a document asks us to permit either the omission of an item of information which would ordinarily be required by the Prospectus Rules, or the presentation of alternative disclosure. This is important to issuers because the preparation of information, particularly financial information, can be both time-consuming and costly.
- 4.2** As a competent authority, we take our scrutiny obligations under the PD seriously, and understand its overall purpose to be to harmonise disclosure in securities offerings and exchange admissions across the EU. The PD allows competent authorities to derogate from its requirements in certain circumstances. However we may only do so where we were satisfied that one of the possible grounds for omission set out in FSMA s87B(1) applies (for example, the information is of minor importance and unlikely to influence an informed assessment).
- 4.3** In rounds of engagement leading up to the Forum, we had picked up feedback from practitioners that we are less prepared to derogate from prospectus requirements than certain other EU authorities. The Forum was invaluable in that it enabled us to discuss and analyse this feedback carefully.
- 4.4** Following these discussions, we are now satisfied that other competent authorities do not take a generally more permissive stance towards derogations from prospectus requirements than we do, save for one specific instance the Forum helped us identify and which we outline below. Rather, based on feedback from Forum members, we now think the reason a perception we are less willing to agree derogations exists is that in many cases the operators of the exchange-regulated MTF platforms are being confused with the securities regulators in a given jurisdiction. Unsurprisingly, given the specialist institutional investor base of these markets and the fact that the PD does not apply to them, operators of these MTFs may be more prepared to apply different approaches and standards to those required by the PD.
- 4.5** Nevertheless, the Forum discussions did help us to identify one particular area where our approach does differ from that of at least one other national competent authority. This is

in the area of derogations from the requirement to include historic financial information on all guarantors of a debt issue. Many debt issuers will have multiple guarantors in their group structures. Often this is because the guarantees will be so-called 'upstream guarantees' put in place between group companies for the purpose of ensuring the liabilities of the issuer rank pari passu with other group liabilities. If financial information on all of these guarantor companies is included in a document, it can result in an unduly lengthy document which is significantly more costly to produce. We have, for example, come across structures involving dozens of guarantors. It is in this area that we now consider there are grounds to review our approach to derogations.

- 4.6** As a result we are launching a public consultation on a guidance note which will provide greater clarity over the circumstances in which we may be prepared to derogate from the requirement to include financial information on a guarantor, including for example, where it can be demonstrated that, among other things, the guarantor(s) represent(s) at least 80% of an issuer's consolidated accounts assessed on a range of metrics. This approach is successfully employed elsewhere in Europe, and our current view is that it is proportionate and sensible. The guidance note describes the principles we will look to apply, as opposed to exhaustive or mandatory criteria; we will apply discretion and take account of the specific factors which may apply to each individual case.
- 4.7** The guidance note clarifies what issuers and their advisers can expect from us when requesting derogations – our intention is to provide a streamlined and consistent approach to derogations in the circumstances described in the note.

5. A new engagement strategy

We have reformed the way in which we communicate and engage with market participants. Our Debt Market Relationship Programme provides advisers who interact most frequently with us with a dedicated relationship manager, as a means of discussing technical questions on matters not already clearly set out in our published rules or guidance. An additional new Enquiry Service will shortly be put in place to address the needs of other advisers. Our existing written guidance facility remains in place and we continue to provide a range of guidance notes in our online Knowledge Base. The total package ensures we are fully accessible to the advisory community. We expect these measures will greatly reduce the costs and 'red-tape' associated with putting queries to us, without depriving market participants of regulatory certainty in scenarios where this is paramount.

- 5.2 As highlighted in the introduction, one of the themes the Forum returned to repeatedly during its sessions was the issue of approachability. Practitioners value a regulator which is clear, consistent and responsive. This requires a regulator that engages actively with market practitioners. Members of the Forum welcomed the commitment that our UKLA Department has shown to make significant improvements in this area.
- 5.3 Our recent round of engagement with law firms showed how much they valued ongoing dialogue. In particular, a previous debt practitioner relationship programme was highly regarded by advisers and perceived as providing benefits such as improved consistency, an opportunity to discuss issues at an early stage and named contacts.
- 5.4 Consistent with this feedback, we recently launched a new Debt Market Relationship Programme, a structured series of meetings with law firms aimed at ensuring we are in active dialogue. The programme also provides those law firms with whom we interact most frequently (covering c. 90% of our DCM documents) a dedicated relationship manager to call whenever debt deals need to be discussed.
- 5.5 In addition, in order to ensure our engagement strategy is not anti-competitive, we are planning enhancements for those firms not assigned a relationship manager under the programme. We will be organising a series of interactions, ensuring information is shared, and we will provide details of how any firm can approach us to discuss queries via a new Enquiry Service which will be put in place during May 2016. We will also keep the market under review so if new significant players emerge in future we can assign them a relationship manager.
- 5.6 Our relationship managers are DCM specialists. They are tasked with keeping firms abreast of developments, and firms are able to call them to discuss service issues or to run initial ideas past them. In particular, they are able to assist on ad hoc matters such as discussing new transactions, exploring technical queries and clarifying policy positions. We can and will provide 'in principle' steers to firms on how we are likely to think through a particular problem. We will

also continue to offer formal written guidance. The latter is a facility we offer to all areas of the wider listing regime, not just DCM, and we think it an important part of ensuring we conduct business in a clear, transparent and professional way. However, we recognise that in many DCM situations, advisers or issuers considering how to proceed may not need this level of certainty. Written guidance is there for those occasions where greater certainty is required, however we will no longer generally insist an exchange is conducted in writing. It should be for practitioners to consider the extent to which they need to rely on our feedback and therefore ultimately the degree of formality required.

6. Our new 'Early Engagement Team'

We are establishing a new Early Engagement Team, dedicated to explaining to prospective overseas debt issuers the process of seeking a UK listing. Through it, we will provide technical and practical assistance to these prospective issuers, who may not be familiar with either the European Directives or UK listing regime. This new service formalises and expands upon work already performed by the UKLA Department, and is expected to produce a smoother, more cost effective, better informed and transparent process for issuers seeking a first-time listing.

- 6.1 Throughout the Forum sessions, one of the key areas of discussion was the issue of how to make the process of seeking a UK listing more accessible to prospective overseas issuers, including those from the larger Asian and emerging markets and in the Islamic finance sector.
- 6.2 As with other recommendations in this report, Forum members approached the issue by considering recent positive experiences. In particular, some members highlighted where our staff, alongside counterparts in government and exchanges, have worked to ensure that a number of prospective emerging market issuers were able to better understand the obligations they would be taking on and the nature of the process ahead of them when listing debt in the UK. This was seen by members of the Forum to be a particularly effective way of working.
- 6.3 As a result, we are proposing to formalise and roll-out these services, by creating a new team within our UKLA Department which would be responsible for these activities on a permanent footing.
- 6.4 The new team's objective will be to provide both technical and practical assistance to prospective issuers, focusing on those overseas entities which may have less access to information on the listing process. These applicants may not be familiar with either the European Directives or UK listing regime. We envisage that it will serve as an example of our commitment to supporting innovation in a way which is not dissimilar to our Innovation Hub, which in other areas of the FCA already seeks to assist financial services businesses looking to introduce innovative financial services or products with the authorisation process. It does so in way that does not erode consumer protection standards.
- 6.5 In introducing the new Early Engagement Team we are applying similar thinking to our role as securities regulator in the debt capital markets: demonstrating more flexibility in the way we engage and removing barriers to interacting with us, to encourage and support innovation where it will not erode investor protection or the integrity of the financial system. The 'innovation' in this context is broadening of the range of listed debt securities in which investors may choose to transact, should more prospective overseas issuers achieve UK listings of their debt securities. We will provide enhanced practical support to these entities around the processes which obtaining a UK listing involves, without compromising on the regulatory obligations such a listed status also entails. Our intention is that they should receive a consistently high level of

service, even if from time to time there will inevitably be circumstances in which it becomes clear that the maintenance of high regulatory standards means we cannot ultimately grant an application for listing.

- 6.6** The team will comprise members of staff with extensive debt securities knowledge as well as Prospectus and Listing Rules expertise. It will encourage initial contact to be made at an early stage in collaboration with an issuer's legal advisers and relevant stock exchange representatives, and would deal with any technical queries or concerns issuers may have relating to the listing rules, document disclosure, or continuing obligations after admission, as well as any procedural questions or other matters which issuers would like to discuss.
- 6.7** Upon commencing dialogue with the Early Engagement Team, an issuer will be allocated a specific, named contact within the team who will be assigned to assist the issuer's application from initial contact up until admission to the Official List.
- 6.8** Where practicable, the team will offer issuers assistance through the necessary regulatory steps in numerous ways by offering, for example:
- Early access to experienced debt specialists at the UKLA Department.
 - Conference calls and face-to-face meetings with senior UKLA Department staff.
 - A high level gap analysis of any non-EEA published document which might be used as the source document for the first draft of a listing document.
- 6.9** It is our hope the team will meet periodically with exchanges and government, so we can understand which jurisdictions their marketing activity is focused on and thereby develop an understanding of the specific challenges that those issuers may face (for example financial information).

7. Further enhancements

In the past year, we have delivered on significant investment to our communications technology, with the launch of our new Electronic Submission System (ESS). However, there remain other aspects of our communications approach and technology which market participants wish us to improve, and we will continue to work to address this.

- 7.1** The Forum discussions identified a number of further proposals which we also think will be beneficial and which we will be implementing.
- 7.2** They are:
- **A feasibility study on improving the technology underpinning the comment process:** There was much discussion at the Forum on the commenting process. Most members argued the technology underpinning it is problematic. It involves sending faxes and is very clearly out of date. We are therefore carrying out a feasibility study on technology enhancements particularly focused on improving the comments process.
 - **Standard comments:** We have also carried out a review of our standard comment processes and the text of the comments themselves (comments that are addressed to all documents) to ensure that these are as streamlined and as effective as possible.
 - **An annual survey on service:** On an annual basis, we will carry out a short survey to gain feedback on the experience for market practitioners. We will need to consider its format and style but hope to perform the first survey on the first anniversary after the publication of this report.

8. Multilateral trading facilities

While in the time available the Forum did not arrive at clear proposals for what the UK's MTF debt offering should be, it is clear that its participants think that the current offering does not provide the range of options which are available in other European venues. Further consideration of and consultation on this important topic, and tangible measures that could be taken to address it, will be a specific area of focus in our forthcoming review of the broader listing regime.

- 8.1** A significant factor in the recent evolution of EU wholesale primary debt markets, and one which the Forum reflected on at length, is the rise of exchange-regulated markets specialising in wholesale debt. Examples of these include the Irish Stock Exchange's GEM and Luxembourg's EuroMTF. These markets are now a significant part of the EU primary debt market landscape, providing issuers with realistic other options for issuance instead of the PD-regulated markets.
- 8.2** For example, GEM hosts nearly 9,000 securities, representing around a third of all Ireland-listed debt. There are over 3,000 debt securities on EuroMTF, well over a tenth of all debt listed in Luxembourg. In contrast, there are fewer than 400 debt securities on the UK's Professional Securities Market (PSM, the existing facility established under the Listing Rules allowing for the listing of debt and GDR securities on non-regulated markets), compared with over 12,000 debt securities in total on the FCA's Official List.
- 8.3** GEM and EuroMTF have the status of MTFs (that is, multilateral trading facilities) under EU securities law. This means that the PD does not apply unless the securities are the subject of a non-exempt offer to the public as defined in the PD. Arrangers structuring deals on these markets are able to do so in a way that ensures that no such public offer is made.
- 8.4** The Forum discussed this trend at length, in particular reflecting on whether the rise in wholesale debt-focused MTFs in other EU centres means the UK has a gap in its overall offering, and if so, how this should be addressed. This discussion considered a range of related issues including whether investors would wish to see a new platform organised along the lines described above, and the type(s) of issuer that might be attracted to such a platform.
- 8.5** Participants thought that, while institutional investors want markets to be subject to appropriate standards of regulation, there is some evidence to suggest the EU's 'regulated market' status is not well understood by all investors. Other arrangements, for example rules applied by MTF operators, appear to enjoy comparable levels of confidence. Similarly, there is little indication that investors in wholesale debt securities particularly value or require listed status, except where their investment policies mandate this or it is a pre-requisite to gaining the 'recognised stock exchange' status required for the purpose of various UK tax reliefs.
- 8.6** The view of the Forum was that the UK overall offering differed from those of other major European jurisdictions. The UK does have a relatively niche wholesale debt-focused MTF in the

PSM. This was created in 2005, when the PD and Transparency Directive were introduced, to address a specific need for a platform for non-IFRS issuers that was identified at the time. The importance of this has declined over time, such that there is now very little requirement for it. Forum participants thought that consideration should be given to reforming the UK's wholesale debt MTF offering, to address wider potential needs.

8.7 In light of the Forum's input, we have decided that the important question of what the UK's MTF offering should provide should be examined carefully and in full as part of our forthcoming broader review of the effectiveness of the UK listing regime to be launched later this year. This project will look at the role of listing in supporting and facilitating development of the UK's broader primary market offering. We therefore think there is clear potential for us, practitioners, exchange operators and the Government to consider how the UK's debt MTF(s) can be viably aimed at serving the needs of the wholesale market. In particular, we intend to consider further:

- The scope and type of securities and issuers that the UK MTF segment should serve.
- The appropriate package of investor protections, taking account of the type of securities and issuers and considering such issues as:
 - Upfront document requirements.
 - The level of scrutiny and vetting that should be applied to issuer documentation.
 - The ongoing financial reporting obligations that should apply to issuers.
- Whether the UK's MTF(s) would need to be designated as 'recognised stock exchanges' by HMRC in order to be successful and, if so, whether legislative change is necessary and exchange(s) to enable it (/ them) to have that status.

9. Implementation

- 9.1** Set out in the table below are our plans for implementing each of the proposals outlined in this report.

Initiative	Launch plan
IT feasibility study	In progress
Consultation on new guidance on derogations of financial information	27 April 2016 Consultation to be published via Primary Markets Bulletin No. 14
A new engagement strategy	Implemented Further enhancements including the Enquiry Service to be implemented 23 May 2016, with additional details on the UKLA Department's pages on the FCA's website
Extension of our Wholesale Debt Approach	23 May 2016 Will apply to all new 'in scope' cases from this date, with new content on the UKLA department's pages on the FCA's website
Expansion of the scope of our SDS service	23 May 2016 Updated content on the UKLA Department's pages on the FCA's website
The Early Engagement Team	23 May 2016 New content on the UKLA Department's pages on the FCA's website
Review of our standard comments	23 May 2016 New content on the UKLA Department's pages on the FCA's website
Annual survey	April 2017

10. Conclusion

- 10.1** The broad range of practical, substantive measures, and topics for further fruitful enquiry identified in this report, are testimony to the constructive and focused input of the Forum's participants. We found the process to be hugely informative, and we are grateful to all of the participants for their willingness to engage with energy and purpose in this initiative.
- 10.2** We have had the benefit of being able to draw on the diverse and extensive experience of a number of senior representatives from across the industry. The proposals we have developed and set out reflect their feedback and views, and we are therefore confident that they are measures the industry will welcome. This is critical to our role as a securities markets regulator, in which we are required to balance the needs of issuers, arrangers, legal advisers, investors and exchanges, each of whom were represented and participated in the Forum.
- 10.3** Through its meetings, the Forum has provided us with candid, detailed and specific insights into the priorities and requirements of market practitioners. As a means of market engagement, we think it has served as a model which could hopefully be used to consider other issues in future.
- 10.4** Particularly in light of our findings, on-going engagement in the wholesale debt market remains a priority for us. We will continue to ensure key stakeholders in this market are kept informed of our proposals, and to value the feedback they provide to us.
- 10.5** We think this will continue to be an important factor in our work as a regulator of the UK's primary debt markets, which underpin the funding and investment needs of a large number of key participants in the broader economy both domestically and globally. Not least for these reasons, we are committed to ensuring these markets function well.



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