

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: UKLA Technical Note - UKLA/TN/405.1 Fund management agreements and independence of the board

Lead regulator: FCA

Date of assessment: March 2017

Commencement date: Guidance finalised November 2015

Origin: Domestic

Does this include implementation of a Cutting Red Tape review? No

Which areas of the UK will be affected? National

Brief outline of proposed new or amended regulatory activity

Companies listed on the Official List (and typically admitted to the London Stock Exchange's Main Market) are subject to a number of rules when joining the market, as well as continuing obligations governing conduct, disclosure rules on an ongoing basis and on an ad hoc basis when they issue further securities. The rules are set out in the FCA's Listing Rules, Prospectus Rules and Disclosure and Transparency Rules. There are additional directly applicable requirements set out in European regulations, notably the Market Abuse Regulation (MAR).

The FCA's UK Listing Authority Department (UKLA) publishes Technical Notes and Procedural Notes, which are short guidance notes intended to provide additional clarity to listed companies and their advisers as to how the FCA interprets provisions in these rulebooks. The FCA typically issues these when it has received a number of questions on the same topic, or other market feedback. The guidance provided in these notes is new guidance, which was subject to public consultation and finalised in November 2015. The objective of this new guidance is to clarify our rules and help firms to have a better understanding about application of those rules.

In May 2014, amendments to Chapter 15 of the Listing Rules came into effect following a public consultation process. Technical Note 405.1, published in November 2015 in Primary Bulletin 12, provides guidance to premium listed, closed-ended investment companies in relation to investment management companies and independence of the board. The Technical Note provides guidance in relation to the underlying Listing Rules requirement that the board of a premium listed closed-ended investment fund must be able to effectively monitor and manage the performance of its key service providers, such as the investment manager, both at admission and on an ongoing basis (LR 15.2.19R and LR 15.4.7AR). The guidance makes it clear that LR 15 does not prescribe specific provisions for investment management agreements, but in the case of a new applicant, the FCA would expect the fund's sponsor to be

able to articulate how the board is able to meet the requirements of LR 15.2.19R (and, in due course, LR 15.4.7AR) in light of termination provisions in the investment management agreement that are particularly onerous or unusual in the context of the fund's investment policy. There are currently 45 sponsor firms approved by the FCA; premium listed companies must appoint sponsors in relation to certain transactions or situations where the listing rules require their guidance. This guidance relates to existing rules, and serves to assist companies by providing specific examples of how a new applicant may demonstrate eligibility.

The guidance also clarifies that the prospectus for a new applicant or further issue should disclose any onerous or unusual provisions relating to termination of the investment management agreement, including the potential impact on the fund.

Technical Note 405.1 provides updated guidance in line with the 2014 amendments to the Listing Rules and does not itself impose any new or additional requirements on companies. The guidance does not prescribe or mandate any specific terms in an investment management agreement, but instead makes clear that the FCA will assess a fund's eligibility within the relevant circumstances, including the fund's investment proposition.

Which type of business will be affected? How many are estimated to be affected?

The guidance is only relevant to the approximately 300 closed-ended investment companies with a premium listing on the Official List.

In practice, the guidance will be most relevant to new closed-ended investment companies seeking eligibility for listing under Listing Rule 15. It is difficult to reliably quantify the number of companies who might seek such eligibility in a given year. In the calendar year 2016, an estimated 30 closed-ended investment companies sought eligibility under Listing Rule 15.

Price base year	Implementation date	Duration of policy (years)	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2015	November 2015	10	-0.014	0	0

Please set out the impact to business clearly with a breakdown of costs and benefits

Note – for all cost estimates below we have assumed the changes will be applied by experienced compliance staff at an estimated rate of £48/hour. The 2016 Robert Half salary guide estimates that a compliance manager in the risk and compliance function of a financial services company based in London earns between £70,000 and £104,000 per annum. Based on working 8 hours per day for 260 days each year our rate equates to £100,000 per annum and is therefore considered a suitably prudent figure for the purposes of our estimates.

Familiarisation cost

We expect that all of the approximately 300 closed-ended investment companies with a premium listing on the Official List would find it helpful to familiarise themselves with the two page guidance note. We would expect that the note would take less than one hour to read, digest, disseminate to relevant members of staff, and, if necessary, update the relevant procedure to reflect the guidance. We would not expect there to be any cost to firms which are already compliant with the underlying Listing Rules (although to be prudent we have included all of the estimated 300 companies in our calculations below); this guidance serves only to

provide an illustration of the practical application of the Listing Rules and does not expand the scope of the rules or prescribe any specific course of action¹.

At the estimated rate of £48/ hour, the total estimated cost for all 300 closed-ended investment companies would be £14,400. This is an estimate of the maximum amount of time it might take a company to review the material as the two page note provides illustrative examples in relation to investment management agreements relevant to new applicants.

Ongoing cost

We consider that this publication creates no ongoing costs for business because the expectations set out in it are wholly inherent in the existing rules and add no new obligations to those rules for any firms. The guidance provides practical applications of the underlying Listing Rules, which were amended in 2014. Once companies are familiar with the approach to investment management agreements under Chapter 15 of the Listing Rules, we would not expect any additional increase in the cost incurred by companies. Although difficult to reliably quantify, on a net basis we expect the guidance to make the application of the Listing Rules easier and quicker because it provides illustrative examples of applying the underlying Listing Rules, producing a cost saving for businesses.

Please provide any additional information (if required) that may assist the RPC to validate the BIT Score.

The level of detail to which individual measures are scored is set to the nearest £100k. This means that where the total cost of measures is estimated at less than £50k they are scored as zero (both as EANDCB and BIT score) for reporting purposes.

Link to Robert Half salary centre

<https://www.roberthalf.co.uk/news-insights/salary-centre-2016>

¹ We arrived at the one hour estimate based on the following calculation. The two page technical note contains approximately 550 words. The speed of reading technical text is 50-100 words per minute based on EFTEC (2013), "Evaluating the cost savings to business revised EA guidance - method paper" the time remaining to digest, disseminate the information and if necessary update the relevant procedures is based on our broader supervisory knowledge of how firms respond to our Technical Notes and also on supervisory conversations with firms about their procedures relating to this specific issue.