

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: UKLA/TN/312.1 – Shareholder votes in relation to hypothetical transactions

Lead regulator: FCA

Date of assessment: January 2017

Commencement date: Guidance finalised March 2017

Origin: Domestic

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

Which areas of the UK will be affected? National

Companies listed on the Official List (and typically admitted to the LSE's Main market) are subject to a number of rules when joining the market, 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 MAR.

The UKLA's Technical Notes and Procedural Notes 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 February 2017. The objective of this new guidance is to clarify our rules and help firms to have a better understanding about application of those rules.

A company that has a premium listing on the Official List must obtain approval from its shareholders before entering into certain transactions set out in the FCA's Listing Rules. For those transactions requiring shareholder approval, the company must produce a circular which is vetted and approved by the UKLA and is sent by the company to its shareholders notifying them of the details of the transaction and the resolutions to be voted on to approve the transaction.

We have recently encountered attempts by premium-listed companies to produce circulars that are required by the Listing Rules at a particularly early stage of a transaction, when key terms of a transaction are outstanding. The guidance set out in the technical note clarifies that it may not be possible to obtain a vote at such an early stage until negotiations are sufficiently advanced such that the company can provide shareholders with all necessary information to

enable them to make an informed decision. The guidance advises companies and their sponsors to contact the FCA to discuss specific proposals.

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

The guidance applies to all companies with a premium listing on the Official List (around 880 companies). In practice, only a subset of these will be affected by this guidance as the frequency that companies enter into transactions of a hypothetical nature requiring shareholder approval will vary.

Price base year	Implementation date	Duration of policy (years)	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2017	March 2017	10	-0.048	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. Companies will already be familiar with classification of significant transactions under Listing Rule 10. We expect that all of the approximately 1000 companies with a premium listing of equity shares on the Official List would find it helpful to familiarise themselves with the 0.5 page guidance note. For the approximately 1000 companies with a premium of equity shares on the Official List who may find it helpful to familiarise themselves with the guidance, we would expect that the note would take up to 1hr to read, digest, and disseminate to any relevant members of staff, and, if necessary, update the relevant procedure to reflect the guidance.

This is an estimate of the maximum amount of time it might take a company, as the 0.5 page note provides practical considerations in relation to how to engage with the FCA under the existing rules. At the estimated rate of £48/ hour, the total estimated cost for all 1000 firms would be £48,000 ([Robert Half salary guide](#))¹.

On the basis of the guidance in the note, companies who are considering a hypothetical vote will need to contact the UKLA to discuss proposals before proceeding further. The purpose of the guidance is to avoid companies wasting time by preparing hypothetical vote circulars which are then not able to be approved by the UKLA because they do not contain the required information. Companies who, after agreeing with the UKLA to proceed with the hypothetical vote will need to prepare and submit the circular to the UKLA – this is required regardless of whether the vote is considered hypothetical or of a standard nature and therefore companies should not incur any additional costs as a result of this guidance.

¹ We arrived at the 1 hour estimate based on the following calculation. The 0.5 page technical note contains approximately 300 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.

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