

## **UKLA/TN/605.2: Supplementary prospectus**

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We will challenge the use of a supplementary prospectus when we are aware that the matter presented is not factually accurate or where the matter presented cannot be credibly considered to be a significant factor.

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### **2. Amendments to terms and conditions**

An SP should relate to the securities for which the prospectus was originally drafted. It is not appropriate to add entirely new securities to a prospectus via an SP, nor is it generally appropriate to change the terms and conditions of the securities, through an SP. This is because the original prospectus will have been drafted for a specific offer (or offer(s) for base prospectuses) and/or admission event(s) (and should contain all necessary information). Fundamental to the description of a specific offer is what security is being offered. As a result we would not expect to see new features added through an SP and would not generally accept amendments to the terms and conditions of a security.

There are, however, ~~very limited~~ certain circumstances where we accept amendments to the terms and conditions, where following the amendment or change to the T&C, the securities are manifestly the same securities.

In assessing whether a security is manifestly the same, we would take into account factors such as whether the change is a response to external events, nature of the security, economic impact of the proposed changes, and whether the proposed changes are purely technical.

When a fundamentally new security is being created, In all other cases a new prospectus will have to be produced.

### **3. Amendments relating to events**

- a. A supplement may be produced to describe external events, such as a factory burning down, etc. Informing investors ~~shareholders~~ of such events, if material, is what the SP regime envisages. To determine whether ancillary changes can be made to the terms of an offer/admission in this circumstance, issuers should consider the examples set out in this note.

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### **4. Amendments relating to the offer period or the offer amount**

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When assessing whether an offer/admission can be amended through an SP, we will consider whether the fundamental premise of the original document still stands. That is whether the SP relates to a matter in the original prospectus. For example, if the use of proceeds for an equity issue changes significantly as a result of the amendment, a new prospectus rather than an SP is likely to be required.

## **PR 3.4.1R Timing of supplementary prospectuses**

There are two additional points worth noting. Firstly, we consider it to be best practice in offer situations for the offer to be suspended between the trigger event and the publication of a supplementary prospectus in certain circumstances e.g. where the offer is actively marketed or where securities are allotted immediately such that any investors that completed their purchase before the supplementary prospectus was published would not benefit from the withdrawal rights. This ensures investors are not unconditionally allotted shares based on incomplete disclosure.

## **UKLA/TN/629.1: Final terms**

### **What information can I include in the final terms?**

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(1) Category B and C information as set in the Annex XX; (2) information ~~required by~~ set out in Annex XXI;

### **Can notes exempt from Prospectus Directive (PD exempt notes) be issued from a base prospectus?**

PD exempt notes can be issued from a document that includes a prospectus so long as it is clear that the PD exempt notes are not issued from the approved prospectus. This is consistent with ESMA Q&A 49, which states that a document should not be called a prospectus if the document is not being used in the capacity of a prospectus (as defined by the PD) unless it clearly states that it is not a prospectus for the purposes of the PD.

**Retail investors:** To make the distinction clear to retail investors, PD exempt notes can ~~can~~ should be issued from a combined document containing a base prospectus and another document such as an offering memorandum. This combined document should ensure that all the information that is not part of the base prospectus is included in a single section within the document, which would be clearly marked as not forming part of the base prospectus and as not having been reviewed or approved by the UKLA.

The combined document must contain final terms (for use with the base prospectus) and a pricing supplement (for use with the offering memorandum in relation to PD exempt notes). The pricing supplement should include language in prominent bold text to make it clear that it does not form part of the base prospectus approved by the UKLA. We believe this language will ensure that retail investors are not misled and what is covered by the prospectus will be made clear to them.

~~We will also require that the information provided to investors is clearly presented and easy to analyse.~~

**Wholesale investors:** We recognise that a wholesale investor will be more knowledgeable in investment matters. Accordingly for wholesale documents, the base prospectus must include a clear statement that the PD exempt notes do not form part of the base prospectus approved by the UKLA. The base prospectus should also include a pricing supplement for use when issuing PD exempt notes. The pricing supplement should include language in prominent bold text to make it clear that it does not form part of the base prospectus approved by the UKLA.

~~We believe the above approaches are consistent with ESMA Q&A 49, which states that a document should not be called a prospectus if the document is not being used in the capacity of a prospectus (as defined by the PD) unless it clearly states that it is not a prospectus for the purposes of the PD.~~

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## **UKLA/TN/631.1: Zero-coupon notes**

This technical note was previously titled 'PD disclosure issues relating to non-equity securities'