

Primary Market Bulletin

Newsletter from the FCA for primary market participants

March 2016 / No. 13

About this edition

Welcome to the thirteenth edition of *Primary Market Bulletin*. We begin this edition as usual with general news and information. We then explain the latest changes we have made, or are proposing to make, to our [Knowledge Base](#). This edition is a larger than usual principally because we are consulting on a number of changes arising following the adoption by the Commission of several Regulatory Technical Standards aimed at ensuring a consistent EU-wide implementation of the Prospectus Directive. Additionally, as part of our ongoing commitment to greater clarity and transparency on how we approach our work, we are also presenting a number other guidance notes for consultation. These cover a range of areas, and generally arise from situations in our day-to-day work where it becomes clear to us that practitioners would benefit from additional insight into a process, rule or typical situation. As always, we welcome your views on the approaches we outline in the notes.

What's new?

On 30 November 2015, following consultation, the European Commission published detailed [proposals to revise the Prospectus Directive](#), known as colloquially as 'PD3'. PD3 is part of the Commission's wider Capital Markets Union initiative, which aims to deepen and broaden Europe's capital markets and harness their power in service of the real economy. Clearly, a major reform of the Prospectus Directive is a significant event for us and our work and we are fully engaged with stakeholders, colleagues in government, UK and European trade bodies, and of course the EU institutions in order to influence the outcome of the review.

We also think our domestic listing regime has an important role to play in ensuring capital markets contribute to sustainable growth. As a result, also in November our Acting Chief Executive Tracey McDermott [announced a review](#) that would consider the overall structure of UK primary markets and within it the premium listing regime, looking in particular at whether it continues to meet the needs of issuers and investors in the real economy. In particular we will be considering the extent to premium listing is able to support innovative and growing sectors of the economy, while maintaining high standards.

At the same time, we also launched a UK Debt Market Forum, aimed at bringing together a broad range of UK debt capital market participants and stakeholders with a remit to look for practical measures to enhance the effectiveness of listed debt capital markets in the UK. Again this recognises the importance these markets play in supporting the real economy. We aim to report on this in April 2016.

Other European news

- On 15 December 2015 ESMA published its 23rd update to its Questions and Answers on prospectuses.
- On 8 February 2016 ESMA published its opinion on ESMA assessment of Turkish laws and regulations on prospectuses.
- As we note below, the Commission published its delegated regulation making the regulatory technical standards (RTS) on prospectuses in the EU Official Journal (OJ) on 4 March 2016. We outline the proposals for consequential changes to the FCA Handbook below.

Consultation feedback and changes to the Knowledge Base

Ongoing guidance review

We are giving further consideration to the feedback we received on technical note UKLA/TN/541.2 – Scope and application of vote holder and issuer notification rules in response to our consultation in PMB No.12 (November 2015) and we intend to respond to it in the next edition of PMB.

Published guidance

We have made the following changes to the Knowledge Base, which we proposed in PMB No. 12:

- the amendment of one existing procedural note
- the re-consultation on one new technical note, proposed in PMB No. 11, and
- the amendment of thirteen existing technical notes

Here, we summarise key feedback received on our proposals, and our response to that feedback.

Technical Notes

UKLA/TN/406.1 - Application of related party rules to funds investing in highly illiquid asset classes

We received one response to the reconsultation on this note which sought clarity in relation to its applicability. We do not consider the note needs amending to address the response, but will provide guidance to individual issuers or their representatives where necessary.

We did **not** receive any feedback on our proposals for the following notes, which we have therefore added or amended as proposed in PMB No. 12:

Procedural Notes

UKLA/PN/904.2 - Public offer prospectus - Drafting and approval

Technical Notes

Category: Governance and conduct

UKLA/TN/209.2 - Listing Principle 2 – Dealing with the FCA in an open and co-operative manner

Category: Periodic financial information

UKLA/TN/503.2 - Equivalence arrangements for third country issuers

UKLA/TN/504.2 - Exemptions from the periodic reporting requirements

Category: Disclosure of positions held by issuers, investors and management

UKLA/TN/542.2 - Issuer's obligations

UKLA/TN/543.2 - Shareholder obligations

UKLA/TN/544.2 - Third country equivalent obligations

UKLA/TN/545.2 - Changes in holdings

UKLA/TN/546.2 - Voting rights that are disregarded for notification purposes

UKLA/TN/547.2 - Aggregation of managed holdings

UKLA/TN/548.2 - Market makers

UKLA/TN/549.2 - Asset managers

UKLA/TN/550.2 - Trading book exemption

UKLA/TN/551.2 - Aggregation of holdings

Proposed guidance

We are consulting on the following further changes to the Knowledge Base:

- the amendment of six existing procedural notes
- the addition of five new technical notes
- the re-consultation on one new technical note, proposed in [PMB No. 7](#), and
- the amendment of three existing technical notes.

Here, we summarise our proposals.

Procedural Notes

[UKLA/PN/901.3 - Eligibility process](#)

[UKLA/PN/903.3 - Review and approval of documents](#)

[UKLA/PN/904.3 - Public offer prospectus – drafting and approval](#)

[UKLA/PN/905.2 - Passporting](#)

We have amended the Prospectus Rules as a result of [Commission Delegated Regulation \(EU\) No. 2016/301 regarding the approval and publication of prospectuses and advertisements](#) (the 'OD2 RTS Regulation'), which came into force on 24 March 2016. We consulted on the impact of the OD2 RTS Regulation on our Prospectus Rules and Listing Rules in [CP 15/28](#) and [CP 15/42](#) respectively and published our feedback and final rules in Handbook Notice 31.

In light of both the OD2 RTS Regulation and the changes made to the Prospectus Rules, these Procedural Notes are now out of date. As a result, we are consulting on amendments to these notes.

In relation to PN 903.3, we are also consulting on some minor changes to reflect changes made to requirements for sponsors in LR8.6.19R, as set out in [CP14/21](#).

[UKLA/PN/902.2 - Listing securities via final terms](#)

Different requirements apply to the submission of final terms depending on whether the final terms are submitted for listing purposes or for [Prospectus Directive \(2003/71/EC\)](#) ('PD') related purposes. As changes have recently been made by [Directive 2014/51/EU](#) to the requirements of the PD regarding the filing and communication of final terms, we propose including additional text in this note which explains the interaction of these different requirements.

We have also proposed some minor changes to other aspects of the text.

[UKLA/PN/910.2 - Additional powers to supervise sponsors](#)

As of 1 April 2015, under the concurrency provisions in the [Financial Services and Markets Act 2000 \(FSMA\)](#), the FCA has competition law powers, including powers under the [Competition Act 1998 \(CA98\)](#) in relation to agreements and conduct relating to the provision of financial services (which includes the provision of sponsor services).

We are bound by statutory provisions to give 'primacy' to CA98 enforcement in certain situations. This means that before exercising our section 88E FSMA powers (which enables us to limit, restrict or suspend a sponsor firm to advance our operational objectives), amongst others, we have a duty to consider whether it would be more appropriate to proceed under CA98. If we consider that it would be more appropriate to proceed under CA98, we must do so rather than exercise our section 88E FSMA powers.

We aim to exercise our functions as transparently as possible, recognising the importance of ensuring that appropriate information is provided on our decision-making process and also to our being open and accessible to stakeholders. So we have updated this note and [UKLA/TN/712.2 Additional powers to supervise and discipline sponsors](#) to include reference to our C98 primacy obligation whenever considering the potential use of our section 88E powers. We have also taken this opportunity to make minor drafting amendments to the note.

Please refer to [FG15/8: The FCA's concurrent competition enforcement powers for the provision of financial services](#) for more details.

Technical Notes

Category: Transactions

[UKLA/TN/312.1 – Shareholder votes in relation to hypothetical transactions](#)

We have recently encountered attempts by premium-listed issuers to produce circulars that are required for voting purposes at a particularly early stage, when key terms of a transaction are outstanding. We are consulting on a proposed new technical note to clarify our views on such scenarios.

[UKLA/TN/314.1 - Reverse takeovers and uncapped consideration](#)

We have recently been asked about how uncapped consideration may affect the classification of a transaction as a reverse takeover. We are consulting on a new technical note to provide further clarity on this matter.

Category: Specialist companies

[UKLA/TN/424.1 - Removal from the Official List of listed equity shares of individual funds of Open-Ended Investment Companies \(OEICs\)](#)

We are proposing to add this new technical note to make the position of OEICs clearer, and removing listed equity shares of individual sub-funds from the Official List.

UKLA/TN/425.1 - Open-ended investment companies and transfer restrictions

We are consulting on a new technical note on open-ended investment companies to highlight a scenario in which an issuer may not be able to meet Listing Rule requirements.

Category: Public offers, admission to trading and the marketing of securities

UKLA/TN/604.2 - PD Advertisement regime

As set out above, the Prospectus Rules have recently been amended as a result of the OD 2 RTS Regulation, which came into force on 24 March 2016. In light of both the OD 2 RTS Regulation and the changes made to the Prospectus Rules, this note is now out of date. As a result, we are consulting on amendments to this note.

UKLA/TN/629.3 - Final Terms

We are proposing amendments to this note to reflect amendments made by Directive 2014/51/EU to the requirements of the PD regarding the filing and communication of final terms which came into effect on 1 January 2016.

Category: Sponsors

UKLA/TN/712.2 - Additional powers to supervise and discipline sponsors

Please see UKLA/PN/910.2 - Additional powers to supervise sponsors to read more about the amendment to this note.

Additionally, we have taken this opportunity to update this note in relation to suspension of a sponsor's approval at the sponsor's request (LR8.7.25R) as well as to make minor drafting amendments. This update reflects the guidance in LR8.7.26G as well as our current thinking and expectations following our recent experience with some sponsors.

UKLA/TN/713.1 - Sponsors: Application of principle to deal with the FCA in an open and co-operative manner

We previously consulted on a proposed technical note on the open and co-operative principle in PMB No. 7. However, after considering feedback received from that consultation and in light of the commentary and conclusions in Final Notice 2015: Execution Noble & Company Limited, we have decided to expand on and update the guidance contained in that proposed technical note. We have also taken this opportunity to update references to the Disclosure Rules and Transparency Rules in the proposed note, to reflect changes that will be effected from 3 July 2016 by the Market Abuse Regulations (2014/596/EU). Accordingly, we are re-consulting.

UKLA/TN/717.1 - Sponsors: Record Keeping Requirements

This proposed technical note provides additional guidance on the application of the record keeping requirements in LR8.6.16AR and supplements the rulebook guidance in LR8.6.16BG and LR8.6.16CG.

In December 2012, we introduced new record keeping rules and guidance into the Listing Rules. Since then, we have seen a significant evolution in market practice and improvements in the quality of most sponsors' records. However, through our program of onsite visits we have observed some areas of record keeping practices where we consider further improvement is desirable and we think sponsors would benefit from further guidance on our expectations.

The proposed guidance endeavours to assist sponsors to understand the materiality threshold for matters that need to be recorded and the types of information that need to be recorded about material judgements, while acknowledging that the application of the record keeping requirements is fact-specific and sponsors will need to exercise professional judgement in determining how LR8.6.16AR applies to a particular matter. Additionally, the proposed guidance endeavours to clarify that there is flexibility in how a sponsor complies with the record keeping requirements and the types of records it keeps to meet its obligations, provided that the sponsor creates and retains accessible records that are sufficient to meet LR8.6.16AR.

We want to hear what you think

Please send your comments on our latest proposals to primarymarketbulletin@fca.org.uk. Alternatively, send them by post to:

Marta Alonso
UKLA Department
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
Please send us your comments by 10 May 2016.

Equality and diversity

We are confident that our proposals do not give rise to equality and diversity implications but we would welcome your comments should you have any concerns.

Useful links

To access the guidance referred to in this edition of PMB, see our website:

[PMB No. 12 guidance consultation](#)

[PMB No. 13 guidance consultation](#)

[PMB No. 13 finalised guidance](#)