

## Primary Market Technical Note

### Listing Principle 2 – Dealing with the FCA in an open and cooperative manner

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA

#### Rules and guidance

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UKLR 27.2.1R; UKLR 1.2.5G

Listing Principle 2 requires issuers to deal with the FCA in an open and cooperative manner. This obligation is broader than simply requiring issuers to ensure that they deal with us in an open and cooperative manner on ongoing matters. We consider that it also applies where issuers may have to approach the FCA prior to a transaction or where an issuer is no longer in compliance with its continuing obligations. ~~In particular, LP 2 requires issuers to approach us in relation to significant transactions. However, it is not necessary for issuers to contact us in relation to all transactions. The following provides an indication of the factors that should be considered by issuers and their advisors when trying to ascertain whether to contact us, and examples of transactions that could be considered significant.~~

~~It is not possible to describe all the factors that should be taken into account when trying to ascertain whether to contact us. However, the following considerations are likely to be relevant.~~

- **Is there a role for the FCA?** Issuers should consider the need for timely disclosure to us in circumstances where we have a regulatory role to perform ~~before the transaction can proceed~~. Examples of where we will have a role to play include providing guidance on the interpretation of a rule, waiving or modifying the application of a rule, or making a decision on whether a suspension of listing is appropriate.
- **Is the decision time-critical?** Where an issuer is aware that a decision will need to be made by a certain point in time – for example, making an announcement before the market opens – issuers should ensure that they contact us well in advance of the event.
- Does the timing of contact allow for us to disagree with the proposed approach?
  - Issuers should ensure that they allow, within their timetable, sufficient time for us to consider the substantive matter presented and to form a view. This is particularly important in circumstances where the timetable cannot be delayed if we disagree with an issuer's position, due to an immovable event, such as insolvency or a need for a suspension of listing before the market opens.

~~Based on the above considerations, An examples of a the types of transactions where we would expect an issuer to carefully consider the timing of initial contact with us include is an reverse takeovers initial transactions where this contact is required under UKLR 5.6.613.4.4R, and class 1 disposals by issuers in severe financial distress. However, a reverse takeover by a premium listed issuer or routine class 1 transaction with a limited role for us before the submission of the circular is unlikely to require early contact.~~

Where an issuer becomes aware it is no longer in compliance with a continuing obligation, for example having a sufficient number of shares in public hands (UKLR 6.2.22R, UKLR 13.3.4R), we would expect the issuer to contact us to discuss and agree what actions it needs to take.

In circumstances where an issuer is unclear on whether Listing Principle P 2 applies, UKLR 1.2.5G offers general guidance, highlighting that an issuer should consult the FCA 'at the earliest possible stage' if there is any doubt about how a UK Listing Rule applies in a particular situation.

Where we make contact with an issuer, for example to discuss its disclosure obligations on the back of media speculation or an unexplained significant share price movement, an issuer should be mindful of Listing Principle 2 when responding to our enquires. Failure to do so will be taken seriously by us and could result in FCA Enforcement action.