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Primary Market Technical Note

Disclosure of “lock-up” agreements and restrictions on the transfer of securities

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules (UKLR), Prospectus Rules: Admission to Trading on a Regulated Market (PRM), Disclosure Guidance and Transparency Rules (DTR), Market Abuse Regulation (MAR) 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

UKLR 1.3.3R; PRM Appendix 1 Annex 2.8R(1)(v), PRM Appendix 2 Annex 8.7 item 7.4, Annex 9.7 item 7.1, Annex 10.1 item 1.17, Annex 8.4 item 4.8, Annex 9.4 item 4.4, Annex 10.1 item 1.12, Annex 11.4 item 4.16 and Annex 13.1 item 1.8

Disclosure of lock up agreements

Investors with a significant equity holding in a company may enter into lock-up agreements with their brokers for a certain period of time. This may occur at IPO or following a secondary market placing. Normally, investors who are party to such agreements are under an obligation to their broker not to sell their shareholding for a certain period of time, save in certain limited circumstances. However, on occasion, such commitments can also be waived, cancelled or modified before the end of the term of the lock-up agreement with the consent of the broker.

Listed companies themselves, both in respect of their own shares and as investors in other companies, can be subject to the obligations imposed by lock-up agreements and should consider their disclosure obligations in such circumstances. (Listed companies may, on occasion, also make disclosures on behalf of their significant investors).

Issuers must consider the implications of Article 12(1)(c) of MAR in relation to false or misleading information.

Further, UKLR 1.3.3R requires issuers to take reasonable care to ensure that any information it notifies to a RIS or makes available through the FCA is 'not misleading, false or deceptive and does not omit anything likely to affect the import of the information'.

We would consider terms or conditions of a particular lock-up agreement which allow for a lock-up commitment to be modified, waived or cancelled by a party to the arrangement during the lock-up period to be relevant information within the scope of UKLR 1.3.3R. Depending on the way the lock-up agreement is explained, the market may conclude, in the absence of such disclosure, that the relevant agreement is irrevocable. Therefore, we would expect listed companies to provide sufficient clarity on this point when information regarding lock-up agreements is being announced or published.

Where a prospectus is prepared for the admission to trading on a regulated market of equity securities or global depositary receipts, for example for an IPO, the PRMs require disclosure of specific details in relation to lock-up agreements. This includes the 'parties involved', the 'content and exceptions of the agreement' and an 'indication of the period of the lockup' (see PRM Appendix 2 Annex 8.7 item 7.4, Annex 9.7 item 7.1 and Annex 10.1 item 1.17).

Restrictions on the transfer of securities

There are a number of circumstances where restrictions may be imposed on an investor's ability to transfer securities. These include selling restrictions applicable in a specific country or a lock up agreement between an issuer and existing shareholders in which shareholders agree not to sell their shares for a defined period. In general, securities subject to such restrictions remain "securities" falling into the scope of the PRMs.

Securities are within scope of the PRMs if they are transferable securities (other than transferable securities exempt from the PRMs under PRM 1.3), which is defined as meaning those classes of securities which are negotiable on the capital market, with the exception of instruments of payment.

The PRM disclosure requirements require a description of any restrictions on the transferability of the securities (see PRM Appendix 1 Annex 2.8R(1)(v), PRM Appendix 2 Annex 8.4 item 4.8, Annex 9.4 item 4.4, Annex 10.1 item 1.12, Annex 11.4 item 4.16 and Annex 13.1 item 1.8) and lock-up agreements of selling securities holders. This reinforces the view that restrictions on transferability do not necessarily mean that the securities are not transferable securities for the purposes of the PRMs.

Nevertheless, this needs to be considered on a case by case basis. Some restrictions may be so broad that they result in securities no longer falling into the scope of the PRMs.