FINANCIAL CONDUCT AUTHORITY

DRAFT FOR CONSULTATION

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Primary Market Technical Note

Exemptions from the requirement to produce a prospectus

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), 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

Prospectus Rules: Admission to Trading on a Regulated market (PRM) PRM 1.4.3 to 1.4.13

Under the Public Offers and Admission to Trading Regulations (POATR), the FCA has rulemaking responsibilities regarding admissions to trading on regulated markets and is able to specify when a prospectus is required.

In PRM 1.4.3 to 1.4.13 there are exemptions from the requirement to produce a prospectus for admissions to trading on a regulated

market. We set out below guidance in relation to a number of these exemptions.

a) 75% or 100% exemption

In the PRMs, issuers who are admitting transferable securities fungible with transferable securities already admitted to trading on the same regulated market that represent less than 75% (or 100% for equity securities issued by closed-ended investment funds) of the number of transferable securities already admitted to trading on the same regulated market, are exempt from the requirement to produce a prospectus. The 75% or 100% limit is applied over a rolling 12-month period. As such, any transferable securities admitted over the previous 12 months not covered by any other exemption, would count towards the 75% or 100%, except as provided otherwise by the PRMs (see PRM 1.4.14R). Whether these admissions relate to one or more transactions is irrelevant. In calculating the 75% or 100%, we will discount any securities that have benefited from applying another exemption from the requirement to produce a prospectus except as provided otherwise by the PRMs. So, for example, shares admitted under the employee share exemption would be disregarded for the calculation of the 75% or 100% limit.

For example: A company has 160 shares in issue and then issues a further 40 shares to employees (covered by the exemption in PRM 1.4.12R) after three months. A further issue of 20 shares is placed with institutions (so covered by the exemption in PRM 1.4.3R) six months later. The calculation determining whether the 75% exemption is applied 20/200, i.e. the number of shares for which admission has been sought over the last 12 months for which no other exemption applied, divided by the total already admitted.

This transaction would be covered by the 75% exemption. We can ignore the employee shares in the numerator as they are covered by another exemption.

The company makes a further placement of 20 shares one month later to raise funds for acquiring A. The calculation is now 40/220, i.e. this latest issue is still covered by the 75% exemption. The numerator includes all shares issued in the relevant time period not benefiting from an exemption, and the denominator is increased as a result of previous issues. A further placement of 180 shares occurs one month

later as the company raises funds for the unconnected acquisition of B. The calculation is now 220/240, which is more than 75%, so a prospectus will be required in this final case for issuers unless the issuer is a close-ended investment fund.

b) Subdivision or consolidation

Where the exemption applies in relation to shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, if the issuing of such new shares does not involve any increase in the issued capital, a prospectus is not required by issuers in a redenomination. Issuers may wish to seek legal advice on whether the exemption applies in these circumstances. In such a case we have agreed with the Recognised Investment Exchange (RIE) that no new admission application will be required going forward. The Issuer or its advisers must submit an IM – Amendment to the Official List case via the ESS Portal, specifying the number of reclassified securities and their ISINs (please go to the FCA Listing Applications page for more information on ESS and links to the User Guide explaining how to register – https://www.fca.org.uk/markets/ukla/listing-applications) at least 48 hours prior to the requested listing hearing date. The submission should also set out the proposed timetable and be accompanied by the circular or other document, detailing to shareholders the proposed arrangements. The Issuer or its advisers must ensure that the relevant team at the RIE is also notified.

c) Dividends paid in the form of shares, shares issued for free and securities issued to existing or former employees

The FCA would expect the documents referred to in PRM 1.4.11R and PRM 1.4.12R to include:

i) the identification of the issuer and an indication of where additional information on the issuer can be found;

ii) an explanation of the reasons for the admission to trading together with an indication of the specific provision of the PRMs under which the exemption applies;

iii) details of the offer (key terms and conditions of any offer and/or admission to trading, which is likely to include information on the addressees of the offer, time frame of the offer, minimum and

maximum amount of orders, information on where details of the price can be found, if not yet determined), including the nature of the offer (offer to issue or to sell securities), conditions upon which the securities will be issued or admitted to trading, price of the securities, if any.

In relation to the number and nature of the securities involved in the admission to trading, we would expect this to include a summarised description of the rights attaching to the securities.

This document is not a prospectus; therefore information referred to above should be abbreviated and does not need to be approved or filed with the FCA.

We also consider that this document should be made available to its addressees but not necessarily published. However, the issuer will need to keep their obligations under the UK Market Abuse Regulation under consideration.

d) Securities allotted to existing or former directors

In the PRMs there is an exemption from the requirement for a prospectus for admission to trading of transferable securities which are offered, allotted or to be allotted to existing or former directors by their employer, subject to meeting certain requirements (see PRM 1.4.12R). Upon any allotment, there is no requirement for those persons to own the transferable securities for any period.

This exemption, derived from the equivalent provision that sat in the UK Prospectus Regulation, is targeted at long term incentive schemes/ employee share schemes, with a view to making it easier for companies to incentivise directors and employees to hold securities of their own company, given the positive impact that can have on companies' governance and the long-term value it can create by fostering employees' dedication and sense of ownership, aligning the respective interests of shareholders and employees, and providing the latter with investment opportunities. As such, we do not consider this exemption applicable in situations where the issuer is intending to raise new funds and imposes an allotment to a director simply for the purpose of an onward transfer from the director to a third party (see PRM 1.4.12R(2)(c)). Where an arrangement for onward transfer is in place or contemplation, the issuer should therefore consider this step

and the allotment to be part of an overall transaction, rather than the allotment to an existing director or former director being an isolated step.

If issuers and their advisers are unsure how they may apply this exemption in specific circumstances, we encourage them to contact us to discuss well in advance of relying on this exemption.