

DRAFT FOR CONSULTATION

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Primary Market Technical Note

Content of the prospectus exemption document for takeovers, mergers and divisions

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 and guidance

PRM 1.4.9R and PRM 1.4.10R.

Exemption for takeovers, mergers and divisions

PRM 1.4.9R and PRM 1.4.10R provide exemptions from the requirement to produce a prospectus for admissions to trading made in connection with takeovers, mergers or divisions. An exemption applies to these transactions if a document describing the transaction and its impact on the issuer (exemption document) is made available to the public in accordance with the arrangements set out in PRM 9.5 (Publication of the prospectus), and:

- In relation to takeovers:
 - The equity securities being admitted are fungible with existing securities already admitted to trading on a regulated market prior to the takeover and its related transaction, and the takeover is not considered to be a reverse acquisition transaction; or
 - The exemption document has been approved by the FCA.
- In relation to mergers or divisions:
 - The transaction is not considered to be a reverse acquisition transaction; and either
 - the equity securities of the acquiring entity have already been admitted to trading on a regulated market prior to the transaction; or
 - the equity securities of the entities subject to the division have already been admitted to trading on a regulated market prior to the transaction.

Consequently, in certain circumstances, issuers engaged in a takeover will have to submit their application for approval of an exemption document to the FCA. Also, a takeover that involves the offer of transferable securities other than equity securities will require a prospectus to be produced, unless a different exemption applies.

An exemption document is not a prospectus. As such, there is no obligation to publish a supplementary prospectus for an exemption document. This means that withdrawal rights, as provided for under PRM 10.1.14R to PRM 10.1.18R, will not apply.

Content of the exemption document

PRM 1.4.9R and PRM 1.4.10R both specify that the exemption document must contain information describing the transaction and its impact on the issuer. The exemption document may need to include information about the other party to the transaction and the rights attaching to the securities, depending on the nature of the transaction.

The purpose of this note is to provide guidance on how to comply with this requirement with respect to the three scenarios listed in the table below. The table provides a summary of our guidance in relation to each scenario.

Exemption document scenarios

Exemption	Type of transaction	Exemption document	FCA review/approval
PRM 1.4.9R (where PRM 1.4.9R(2)(b) applies)	Takeovers subject to the Takeover Code where the equity securities being admitted are fungible with those already admitted to trading, and where the transaction is not a reverse acquisition transaction.	Offer document or scheme circular.	No
PRM 1.4.9R (where PRM 1.4.9R(2)(b) applies) Or PRM 1.4.10R	Takeovers involving fungible securities, mergers and divisions, where the transaction is not a reverse acquisition transaction, and the Takeover Code does not apply.	Exemption document containing information specified in Annex I of this note.	No
PRM 1.4.9R (where PRM 1.4.9R(2)(b) does not apply)	Takeovers involving non-fungible securities or where the takeover is a reverse acquisition transaction.	Exemption document containing information specified in Annex II of this note.	Yes

Takeovers subject to the Takeover Code involving fungible securities and where the transaction is not a reverse acquisition transaction

A takeover can be structured either as a contractual offer (Offer) or a scheme of arrangement (Scheme). The exemption in PRM 1.4.9R applies to both types of transactions.

After announcing a firm intention to make an Offer, the offeror will prepare a document (Offer Document) which must, except with the consent of the Panel, be sent to target shareholders and persons with information rights within 28 days of the announcement.

The requirements for an Offer Document are primarily set out in [Rule 24 of the Takeover Code](#). In the case of a Scheme, references in the

Takeover Code to an Offer Document (and related expressions) are construed as references to the scheme circular.

For the purpose of PRM 1.4.9R, the issuer may use the Offer Document or scheme circular, as the case may be, as an exemption document, as long as:

- the takeover is subject to the Takeover Code;
- the equity securities being admitted are fungible with existing securities already admitted to trading on a regulated market prior to the takeover; and
- the takeover is not considered to be a reverse acquisition transaction.

For these types of transactions, no additional disclosure document is required by PRM 1.4.9R. Also, because PRM 1.4.9R(2)(b) would apply, we would not review or approve the Offer Document or scheme circular. Nonetheless, we would expect that, in addition to any Takeover Code requirements relating to publication, the document is made available to the public in accordance with the arrangements set out in PRM 9.5 (Publication of the prospectus).

Takeovers involving fungible securities, and mergers and divisions, where the transaction is not a reverse acquisition transaction, and where the Takeover Code does not apply

When PRM 1.4.10R applies or when PRM 1.4.9R(2)(b) applies and the takeover is not subject to the Takeover Code, the issuer may use a document which includes the information that is specified in Annex I of this note as an exemption document.

Takeovers involving non-fungible securities or where the takeover is a reverse acquisition transaction

For takeovers:

- where the equity securities are not fungible with existing securities already admitted to trading on a regulated market prior to the takeover; or
 - the takeover is considered to be a reverse acquisition transaction,
- an issuer may use a document which includes the information that is specified in Annex II of this note as an exemption document.

In accordance with PRM 1.4.9R(2), an exemption document for these types of transactions requires FCA approval. Issuers can submit this document for review by the FCA via the FCA's electronic submission system (ESS).

Incorporation by reference

For transactions that are not subject to the Takeover Code, information may be incorporated by reference in an exemption document in accordance with PRM 5.1.1R, PRM 5.1.2R and PRM 5.1.4R to PRM 5.1.10R. Any reference to a "prospectus" contained in those provisions may be read accordingly as a reference to an exemption document as referred to in this note.

Complex financial history or significant financial commitment

Where the issuer has a complex financial history as referred to in PRM 4.4.3R, or has made a significant financial commitment as referred to in PRM 4.4.4R, an exemption document prepared in accordance with the annexes to this note may contain all information referred to in Annex I or, where applicable, Annex II to this note about the entity other than the issuer as if that entity were the issuer of the equity securities to ensure that investors have the information they need to understand the nature of the transaction and its impact on the issuer.

ANNEX I

Exemption document for takeovers involving fungible securities, mergers and divisions, where the transaction is not a reverse acquisition, and where the Takeover Code does not apply

SECTION 1	
Identification of persons responsible for drawing up the exemption document	Identify all persons responsible for the information, or any parts of it, given in the exemption document with, in the latter case, an indication of such parts. In the case of natural persons, including members of the issuer's administrative, management or supervisory bodies, indicate the name and function of the person; in the case of legal persons indicate the name and registered office.
Responsibility statement	A declaration by those responsible for the exemption document that, to the best of their knowledge, the information contained in the exemption document is in accordance with the facts and that the exemption document makes no omission likely to affect its import. Where applicable, a declaration by those responsible for certain parts of the exemption document that, to the best of their knowledge, the information contained in

	those parts of the exemption document for which they are responsible is in accordance with the facts and that those parts of the exemption document make no omission likely to affect their import.
Expert reports	Where a statement or report attributed to a person as an expert is included in the exemption document, provide the following details for that person: (a) name; (b) business address; (c) qualifications; and (d) material interest, if any, in the issuer. Where the statement or report has been produced at the issuer's request, state that such statement or report has been included in the exemption document with the consent of the person who has authorised the contents of that part of the exemption document.
Third-party sources of information	Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information

	inaccurate or misleading. In addition, identify the source(s) of the information.
Regulatory statements	A statement that: (a) the exemption document does not constitute a prospectus as defined for the purposes of PRM; and (b) the exemption document has not been subject to scrutiny or approval by the FCA.
SECTION 2	
General information (auditors)	Names of the issuer's auditors for the period covered by the financial statements and the name of the professional body(ies) which they are members of.
Business overview (nature of business)	A brief description of the key principal activities, including the main categories of products sold and/or services performed in the last financial year.
Business overview (significant changes)	Any significant changes impacting the issuer's operations and principal activities since the end of the period covered by the latest published audited financial statements.

Financial information	Financial statements Financial statements (annual and half-yearly) that were published over the 12 months prior to the publication of the exemption document. Where both annual and half-yearly financial statements have been published, provide only the annual statements if they postdate the half-yearly financial statements. Audit reports for the financial statements. Where audit reports: (1) have been refused by the statutory auditors; or (2) contain: a) qualifications; b) modifications of opinion; c) disclaimers; d) emphasis of matter; e) statement of material uncertainty relating to going concern; or f) any other matters reported on by exception,
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	provide the reason for any of the points in (1) and (2) and provide a full description of the items in (2).
Financial information (MERGERS ONLY)	Alternatively [only if we decide to retain the row above], where the company being acquired does not have equity securities already admitted to trading on a regulated market, provide the audited financial statements (annual and half-yearly) that were adopted over the 12 months prior to the publication of the exemption document. Where both annual and half-yearly financial statements have been published, provide only the annual statements if they postdate the half-yearly financial statements. Audit reports for the financial statements. Where audit reports: (1) have been refused by the statutory auditors; or (2) contain: a) qualifications; b) modifications of opinion; c) disclaimers;

	d) emphasis of matter; e) statement of material uncertainty relating to going concern; or f) any other matters reported on by exception, provide the reason for any of the points in (1) and (2) and provide a full description of the items in (2). Where the company being acquired does not have audited financial statements, provide financial statements prepared during the past 12 months and a negative statement stating that the financial statements have not been reviewed or audited.
Accounting standards	Provide financial information in accordance with PRM 4.4.11R to PRM 4.4.15R.
Significant changes (actual)	A description of any significant change in the financial position of the issuer's group which has occurred since the end of the last financial period for which either audited financial statements or interim financial information have been published, or provide an appropriate negative statement.

SECTION 3	
Reasons for the transaction	Purpose of the transaction for the issuer and its shareholders. Purpose of the transaction for the offeree company, the company being acquired or the company being divided and its shareholders. Description of any anticipated benefits resulting from the transaction.
Terms of the transaction	Information on the procedures and terms of the transaction and the governing law of the agreement executing the transaction.
Conditions and guarantees	Where applicable, any conditions to which the effectiveness of the transaction is subject, including any guarantee.

Break fees	Where applicable, any information on break-up fees or other penalties which may be payable if the transaction is not completed.
Notifications and authorisations	Where the transaction is subject to any notifications and/or requests for authorisations, a description of those notifications and/or requests for authorisations.
Financing	Where applicable, all information necessary to fully understand the financing structure of the transaction.
Timetable	Timetable of the transaction.
Risk factors (transaction)	A description, in a limited number of categories, of the material risks that are specific to the transaction, in a section headed 'Risk factors relating to the transaction'. In each category, the most material risk factors in the assessment of the issuer, corroborated by the content of the exemption document, taking into account the negative impact on the issuer and the probability of their occurrence.

Conflicts	Details on any conflict of interests that the issuer, offeree company, company being acquired or company being divided and any of its shareholders may have in respect of the transaction.
Addressees of the offer	The addressees of the offer or allotment of the equity securities connected with the transaction.
Consideration per share	The consideration offered for each equity security or class of equity securities, and in particular the exchange ratio and the amount of any cash payment.
Conditional consideration	Information concerning any contingent consideration agreed in the context of the transaction, including, in case of a merger, any obligation of the acquiring company to transfer additional securities or cash to the former owners of the company being acquired if future events occur or conditions are met.
Valuation methods	The valuation methods and the assumptions employed to determine the consideration offered for each equity security or class of equity securities, and in particular regarding the exchange ratio.

Independent reports	Indication of any appraisals or reports prepared by independent experts and information where these appraisals or reports may be found for perusal. In case of a merger, the information required by Section 909 of the Companies Act 2006, depending on the type of merger, or an indication of where that information may be found for perusal. In case of a division, the information required by Section 924 of the Companies Act 2006 or an indication of where that information may be found for perusal.
SECTION 4	
Working capital	Statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements or, if not, how it proposes to provide the additional working capital needed.
Change in NAV/share	A comparison of the net asset value per share as of the date of the latest balance sheet before the transaction and the issue price per share within that transaction.
Simultaneous offer/admission	Additional information where there is a simultaneous or almost simultaneous offer or admission to trading of equity securities of the same class.

Dilution	A table presenting the number of equity securities and voting rights as well as the share capital for both before and after the transaction. An indication of the dilution (including the dilution in voting rights) that existing shareholders of the issuer will experience as a result of the offer.
Advisors	Where advisors connected with an issue are referred to in the exemption document, a statement of the capacity in which the advisors have acted.
SECTION 5	
Impact of the transaction on the issuer: Strategy and objectives	A description of the issuer's intentions with regard to the future business following the transaction, including an indication of any significant changes impacting the operations, principal activities as well as the products and services as a result of the transaction. Where applicable, include a description of the business prospects and any restructuring and/or reorganisation.

Impact of the transaction on the issuer: Material contracts	A brief summary of all material contracts of the issuer, offeree company, company being acquired or company being divided, other than contracts entered into in the ordinary course of business, which are materially affected by the transaction.
Impact of the transaction on the issuer: Disinvestments	To the extent known, information on material disinvestments such as material sales of subsidiaries or any major line(s) of business after the transaction becomes effective, together with a description of possible impacts on the issuer's group. Information on any material cancellation of future investments or disinvestments previously announced.
Impact of the transaction on the issuer: Corporate governance	(a) to the extent known by the issuer, names, business addresses and functions within the issuer of the persons that are going to be, immediately after the transaction, members of the administrative, management or supervisory bodies and, in case of a limited partnership with a share capital, partners with unlimited liability; (b) any potential conflicts of interest that may arise as a result of the carrying out by the persons referred to in point (a) of any duties on behalf of the issuer and their private interests or other duties. Where there are no such conflicts, a statement to that effect;

	(c) details of any restrictions agreed by the persons referred to in point (a) on the disposal of their holdings in the issuer's equity securities within a certain period of time after the transaction.
Impact of the transaction on the issuer: Shareholding	The shareholding structure immediately after the transaction.
Impact of the transaction on the issuer: Pro forma financial information	In case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported. This can normally be achieved by the inclusion of pro forma financial information presented as set out in PRM App 2 Annex 15, and the associated guidance in TN 633, which is available in the FCA's Knowledge Base on the FCA's website. Alongside any pro forma financial information, a report prepared by independent accountants or auditors.

	In determining whether a transaction gives rise to a significant gross change, TN 633 will be relevant to any determination.
Impact of the transaction on the issuer: Narrative and financial information	Where pro forma financial information is not applicable, provide narrative and financial information about the material impacts that the transaction will have on the issuer's financial statements prepared in a manner consistent with the applicable financial reporting framework and accounting policies adopted by the issuer in its latest or next financial statements. That narrative and financial information does not require auditing. Where that information is audited, provide information about the auditors.
SECTION 6	
Documents available	Information on where the following documents, where applicable, can be perused in the 12 months following the publication of the exemption document:

	(a) the up-to-date memorandum and articles of association of the issuer; (b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer's request any part of which is included or referred to in the exemption document; (c) all reports, letters, and other documents, valuations and statements not covered by points (a) or (b) of this item or by any other points in this Annex, prepared in accordance with the Companies Act 2006. An indication of the website on which the documents may be perused.
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ANNEX II

Exemption document for takeovers involving non-fungible securities or where the takeover is a reverse acquisition

SECTION 1	Information about the issuer
	The information specified in Section 1 of Annex I to this note. The information required in App 2 Annex 1 to PRM, with the exception of Items 1.1 to 1.4 of that annex. Where applicable, provide that information for the issuer of the underlying shares, where different from the issuer of the equity securities. Any reference to “registration document” or “prospectus” contained in in App 2 Annex 1 to PRM may be read accordingly as a reference to an exemption document as referred to in this note.
SECTION 2	Information about the offeree company, the company being acquired or the company being divided
	The information required in Section 2 of Annex I to this note, depending on the type of transaction, for the

	offeree company, the company being acquired or the company being divided. Where one of the aforementioned entities is a group, and the consolidated financial statements have already been published, present the information listed in this section on a consolidated basis. In the case of a takeover, where the requested information on the offeree company is not available, provide a statement to that effect.
SECTION 3	Information about the equity securities admitted to trading on a regulated market for the purpose of the transaction
	The information required in App 2 Annex 8 to PRM, with the exception of Section 1 of that annex. Where applicable, provide that information for the underlying shares if different from the equity securities. Alternatively, in the following cases: (1) for the securities referred to in PRM 4.4.5R, or PRM 4.4.7R, where those securities are not shares or other transferrable securities equivalent to shares, provide the information required in App 2 Annex 11 (with the exception

	of Section 1 of that annex), as well as the additional information referred to in either PRM 4.4.5R(1) or (2), or PRM 4.4.7R(1) or (2), as the case may be; (2) for depository receipts issued over shares, provide the information required in App 2 Annex 10 to PRM. Any reference to “securities note” or “prospectus” contained in the relevant annexes to PRM may be read accordingly as a reference to an exemption document as referred to in this note.
SECTION 4	Description of the transaction
	The information specified in Section 3 of Annex I to this note.
SECTION 5	Impact of the transaction on the issuer
	The information specified in Section 5 of Annex I to this note.