

Primary Market Technical Note

Directors' and management disclosures in share prospectuses

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

PRM Appendix 2 Annex 1 items 12.1, 13.1, 13.2, 14.2 and PRM Appendix 2 Annex 3.8 item 8.1

Often the disclosure relating to the key statements on convictions, bankruptcies, etc, fails to cover all persons required under Appendix 2 Annex 1.12 item 12.1 of PRM. In particular, reference is often made only to the issuer's directors and the disclosure does not cover the company's senior management. We anticipate this will also be the case for drafts of documents submitted which are required to contain this disclosure under Appendix 2 Annex 3.8 item 8.1 of PRM. Issuers are reminded to check whether the appropriate range of individuals have been considered before submitting their document for vetting.

In addition, the wording of the key statements under Appendix 2 Annex 1.12 item 12.1(3)(b) and (c) of PRM relating to convictions

and bankruptcies occasionally does not follow the actual wording of the rules. Appendix 2 Annex 1.12 item 12.1(3) of PRM disclosures require the issuer to include details of any relevant convictions, bankruptcies, receiverships, etc, of directors and other senior management both in a personal capacity and, where they have been acting as a director (or in a similar capacity), in a corporate or partnership at any time within the last five years. We anticipate this will also be the case for drafts of documents submitted which are required to contain statements under Appendix 2 Annex 3.8 item 8.1 of PRM.

Issuers are reminded that the relevant annexes require the disclosure to be made for the previous five years and not restricted to the last 12 months. If an issuer is required to make a positive disclosure under Appendix 2 Annex 1.12 item 12.1 of PRM (or any other equivalent disclosure under other annexes in Appendix 2 of the PRMs), our expectation is that this is disclosed in the first draft of the prospectus submitted to the FCA for review.

For Appendix 2 Annex 1.13 item 13.1 of PRM, disclosure on remuneration paid to directors and senior management is sometimes reflected as a single aggregate amount. In many jurisdictions (including the UK), directors' remuneration should be given on an individual basis, and so this should be disclosed as required by item 13.1.

In many cases, Appendix 2 Annex 1.13 item 13.2 of PRM is not directly addressed in the prospectus. Issuers simply annotate the prospectus to refer to various disclosures relating to pension and retirement plans, but do not specifically state what amounts are set aside for pension, retirement or similar benefits (if any) as required by the rules.

Appendix 2 Annex 1.14 item 14.2 of PRM disclosures commonly include reference to service contracts and the requisite notice periods and severance payable upon termination, without making specific disclosure on any 'benefits' payable on termination. In addition, in circumstances where no benefits are payable on termination, an appropriate negative statement (a requirement of Appendix 2 Annex 1.4 item 14.2 of PRM) is often omitted from the prospectus.

One reading of Appendix 2 Annex 1.14 item 14.2 of PRM is that it only requires information on service contracts that include a termination provision. We do not believe that this is the intention of the rule. As such, issuers should include details on all service contracts, whether they include a termination provision or not. In any event, the reality is that it is very difficult to find a service contract without some form of termination benefit anyway, even if this is simply a notice period.