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Primary Market Technical Note

Significant change statements and material adverse change statements

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 and Guidance

PRM Appendix 2 Annex 1.10 item 10.1(2)

PRM Appendix 2 Annex 1.18 item 18.7.1

PRM Appendix 2 Annex 6.7 item 7.1

PRM 5.1.1R(2), PRM 5.1.3R, PRM 5.1.8R, PRM 10.1.3G, and Articles 17 and 18 of MAR

Appendix 2 Annex 1.10 item 10.1(2) of PRM and Appendix 2 Annex 1.18 item 18.7.1 of PRM require a prospectus to include a description of any significant change in the group's financial performance and the issuer's financial position since the end of the last financial period for which financial information (or, in the case of item 18.7.1, either

audited financial statements or interim financial statements) has been published. Appendix 2 Annex 6.7 item 7.1(1) of PRM requires a description of any material adverse change in the prospects of the issuer since the date of its last published audited financial statements. These statements are commonly referred to as significant change statements and material adverse change statements. Other Annexes in Appendix 2 of PRM contain equivalent disclosure requirements, and this note applies equally to those annexes.

Significant change statements and material adverse change statements are said to be “clean” where there is a negative statement confirming that no relevant change has occurred. They are said to be “qualified” where they describe a relevant change in the financial position, financial performance or prospects, as applicable.

Cross-references in significant change statements and material adverse change statements

It is common for drafts of documents submitted for vetting to contain qualified significant change statements and/or material adverse change statements which simply cross-refer to other sections of the document, including the ‘Current trading and prospects’ section.

We regard significant change and material adverse change disclosures made under Appendix 2 Annex 1.10 items 10.1(2) of PRM and Appendix 2 Annex 1.18 item 18.7.1 of PRM and equivalent provisions in other Appendix 2 Annexes of PRM to be particularly important and, accordingly, we require any such disclosure to be as precise and as detailed as possible. We would expect either a clean statement or, alternatively, a clear explanation about the recent development constituting the significant change or material adverse change. If issuers include cross-references within the statement to other areas of the document, it should be clear exactly which part of the disclosure within that area contains the significant change or material adverse change disclosure. It is likely that matters disclosed under this rule would be price-sensitive and, therefore, we would expect such matters to have been publicly announced without delay in line with Article 17 of MAR. We would also expect issuers to consider Article 18 of MAR.

Forward incorporation by reference and use of “evergreen” language

Significant change statements and material adverse change statements are usually drafted by referencing the date of the most recent financial information to which they refer. However, under PRM 5.1.1R(2) and provided the conditions in PRM 5.1.3R are met, annual and interim financial information and audit reports and financial statements may be forward incorporated by reference in a base prospectus. Pursuant to PRM 5.1.8R, a prospectus that uses forward incorporation by reference according to PRM 5.1.1R(2) must contain a statement identifying what information will be forward incorporated by reference and specifying the Regulatory Information Service (RIS) through which the information will be published. This means that where a base prospectus provides for forward incorporation by reference, the date of the most recent financial information incorporated by reference in it may change during its validity period.

Where significant change statements and material adverse change statements refer to financial information specifying that information’s date, this means that these statements may no longer be up to date once new financial information has been published and incorporated by reference into the base prospectus.

Stakeholders have asked whether the significant change statements and material adverse change statements, which must describe changes since the date of the most recent financial information, may be drafted using “evergreen” language. This type of language would refresh these statements, so they refer to the most recent financial information once that has been published through an RIS and become part of the prospectus through forward incorporation.

In our view, this type of “evergreen” language is acceptable to be included in a base prospectus that provides for forward incorporation by reference in relation to clean significant change statements and clean material adverse change statements. For instance, we would accept a statement under PRM Appendix 2 Annex 6.7 item 7.1 that would read, *“There has been no material adverse change in the prospects of the issuer since the date of its last published audited financial statements”*, provided it is clear from the drafting of the statement and the language providing for forward incorporation by reference that the statement is meant to be read as referencing the newly published, most recent financial information once it is incorporated by reference upon publication through an RIS.

However, we believe that in the vast majority of cases, a qualified significant change statement or a qualified material adverse change statement could not be refreshed using this type of “evergreen” language. This is because, as discussed above, we require significant change and material adverse change disclosure to be as precise and detailed as possible. In most instances, an evergreen change statement could not describe the relevant change that has occurred in a manner that is sufficiently precise and detailed. For instance, we would not accept a qualification that simply refers to e.g. “recent developments described in the most recent annual report” as sufficiently precise and detailed. That said, there may be limited circumstances where a qualification of a significant change or material adverse change statement may meet the general requirement to be sufficiently precise and detailed yet may remain accurate notwithstanding new information being forward incorporated by reference. For instance, this may be the case where the qualification is cross-referring to a specific on-going topic or a recurring sub-heading.

PRM 10.1.3G makes clear that where any information which is forward incorporated by reference into a base prospectus pursuant to PRM 5.1.1R(2) causes a material mistake or material inaccuracy in any other information already appearing in the base prospectus, a supplementary prospectus will be required according to the rules at PRM 10.1.1R and PRM 10.1.4R. This means that where a base prospectus contains clean significant change statements and/or a clean material adverse change statement, a supplementary prospectus may be required where a significant change or material adverse change has in fact occurred and resulted in the clean statement becoming materially inaccurate. This would apply whether or not the clean statement is drafted using evergreen language. Similarly, a supplementary prospectus will be required if the information that is forward incorporated by reference in a base prospectus causes a material mistake or material inaccuracy in a qualified significant change statement or material adverse change statement.