

DRAFT FOR CONSULTATION

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Primary Market Technical Note

Financial information on guarantors in debt prospectuses and requests for omission

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules (UKLR), ~~Prospectus Regulation Rules~~ Prospectus Regulation: 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

Regulation 20 of the Public Offers and Admissions to Trading Regulations 2024

PRM 6.1.2R(2)

Common Requests

PRM Appendix 2 Annex 16.3R 21 item 3 of the PR Regulation requires that where debt is guaranteed, the “guarantor must disclose information about itself as if it were the issuer of that same type of transferable security that is the subject of the guarantee”.

Many companies issue debt securities through a company within their group structure, with the issuer's debt being guaranteed on a joint and several basis by other companies within the group.

A frequently applied structure is for a parent company to issue the securities and have a number (or all) of its subsidiaries grant "upstream" guarantees. This is often done to address structural subordination considerations, to ensure that the debt securities holders rank appropriately with other creditors of the issuer's group.

Therefore, the issuer is required to include in its prospectus separate financial accounts relating to each company in the group guaranteeing the securities (pursuant to PRM Appendix 2 Annex 6.11R Annexes 6.11 and 7.11 of the PR Regulation)

Production of such information can be onerous for the issuer if for example the guarantor entities do not already produce such accounts for any other purpose. Moreover, there are circumstances where such information overlaps significantly with what is already presented in the group's consolidated accounts. It has been suggested to us that this can also potentially cause confusion as to which set(s) of accounts should be analysed in making a credit assessment in connection with the securities.

~~We are frequently asked whether we may be prepared to use our powers~~ Issuers may ask whether we may be prepared to use our powers under regulation 20 of the Public Offers and Admissions to Trading Regulations 2024 Article 18 of the Prospectus Regulation (as specified set out in PRM 6.1.2R(2) PRR 2.8.1 EU) to waive the requirement to include accounts for each individual guarantor, on the basis that "the such information is of minor importance in relation to a specific offer or admission to trading ~~on a regulated market~~ and would not influence the assessment of the financial position and prospects of the issuer or guarantor".

Requests for omission will always be considered on a case-by-case basis. In determining whether an omission request may be granted we will seek to establish how material the information may be to investors. We will take into account a number of factors, but where the following points taken together are satisfied, an omission request is more likely to be successful:

- the guarantees are full and unconditional and are on a joint and several basis (subject to any legal or jurisdictional limitations)
- the guarantors are (directly or indirectly) 100%-owned subsidiaries, excluding directors' shares or other non-material share interests issued for legal reasons
- a material proportion (normally over 80%)¹ of the group's subsidiaries are guarantors (indicating that the group accounts are sufficiently representative of the guarantors), and
- the non-guarantor subsidiaries are immaterial (normally less than 20%)² in relation to the group

Omission requests may still be granted if the above criteria are not all satisfied - we will consider the merits of each request on a case by case basis. For example, an omission request may be granted where alternative financial information on the guarantors is included within the parent company's audited consolidated financial statements.

We also frequently consider requests for the omission of an issuer's financial accounts, where the issuer benefits from a 'downstream' guarantee from a parent entity whose consolidated accounts substantially reflect the financial position of the issuer. Issuers and their advisers should contact us to discuss the potential for omitting issuer financial information in these circumstances.

Best way to approach us

Issuers and their advisers are encouraged to contact us early on in a transaction so that we can consider the particular circumstances of the request. The overarching requirement is that the omission of individual guarantor financial information is of minor importance and unlikely to influence an investor's informed assessment of the issuer and guarantor and the rights attaching to the securities.

A request can be submitted with a draft prospectus, or an issuer or its advisers can contact us for guidance. Written guidance can be given where we have been provided with sufficient information on the specific circumstances of the transaction, including the name of the issuer and its proposed guarantor/s. We would strongly encourage

¹ The most appropriate metrics for demonstrating relative size / materiality will depend on the issuer. Non-exhaustive indicators of size might include revenue, EBITDA, profit before tax, gross assets and net assets and should be discussed with FCA as part of the omission request.

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issuers or their advisers to contact us early in the case of first-time applicants or where there are other unusual circumstances.