FINANCIAL CONDUCT AUTHORITY

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Primary Market Technical Note

Guidance on application of complex financial history and significant financial commitment rules

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, 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

PR Regulation Article 18

Complex financial history and significant financial commitment rules

The complex financial history and significant financial commitment requirements in the UK version of Regulation number 2019/980 of the European Commission, which is part of UK law by virtue of the European Union (Withdrawal) Act 2018 (EUWA) (the PR Regulation), are referred in PRR 2.3.1 UK in the FCA Handbook. They apply to issuers of equity securities producing a prospectus.

In general, issuers producing an equity prospectus will require three years of audited historical financial information. However, in some circumstances, the issuer's own consolidated historical financial information may not be sufficient to meet the requirements of the PR Regulation on a standalone basis, often because the issuer has made, or committed to undertake, a significant acquisition or several material acquisitions.

This scenario is covered by the regulations in Article 18 of the PR Regulation on complex financial history and significant financial commitment of issuers of equity securities. Where there is a complex financial history or a significant financial commitment, these require the inclusion of additional financial and non-financial information in a prospectus.

In practice, these regulations will apply only to a small number of issuers preparing a prospectus.

This technical note explains the FCA's approach to these regulations but cannot cover all scenarios where they apply. Issuers are encouraged to seek guidance from us as early as possible if they are unsure how these regulations may apply to them.

Our approach to the inclusion of financial information

Complex financial history

In practice, the financial information necessary to meet the requirements of the PR Regulation will depend on the specific facts of each case. It remains the responsibility of the issuer to ensure the prospectus contains the necessary information which is material to an investor for making an informed assessment.

In accordance with Article 18(3) of the PR Regulation, a complex financial history is where:

1. the information referred to in the relevant PR Regulation Annexes does not represent the issuer's undertaking accurately;
2. the inaccuracy affects the ability of investors to make an informed decision as referred to in Article 6(1) and Article 14(2) of the UK version of Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, which is part of UK law by virtue of the EUWA (the 'Prospectus Regulation'); and

3. additional information relating to an entity other than the issuer is needed for investors to make an informed assessment as referred to in Article 6(1) and Article 14(2) of the Prospectus Regulation.

This could include an issuer that has made a significant acquisition or a number of significant acquisitions. When reviewing prospectuses of issuers which have made a significant acquisition or a number of acquisitions during their prospectus track record period, in assessing what information is necessary where the issuer has a complex financial history, we look to apply reasonable judgement and consider the following factors:

- the size of the acquisition(s) relative to the issuer;
- the point in time in the track record period when the acquisition(s) occurred; and
- how the issuer describes its business in the prospectus, including the significance of the acquired business(es) to the issuer's overall business strategy and equity story.

Where several acquisitions have occurred during the track record period, we will look at the overall effect on the issuer's business, including the relative sizes of the entities and the timing of their acquisition.

Significant financial commitments

Separate consideration is also given to any acquisitions that have been committed to at the date of the prospectus.

Article 18(4) of the PR Regulation explains that "a significant financial commitment is a binding agreement to undertake a transaction that is likely to give rise to a variation of more than 25% relative to one or more indicators of the size of the issuer's business". The assessment of whether additional financial information may be required on any business to be acquired is made by reference to the criteria outlined in FCA Technical Note 619.1 Guideline 18.

Form of additional financial information

Where additional historical financial information on an entity other than an issuer is required to be included in a prospectus in accordance with Article 18(2) of the PR Regulation:

- we do not expect the additional historical financial information to be provided in a form consistent with the issuer's own accounting policies; and

- we do not expect very short gaps in the issuer's track record to be filled.

The information required by Article 18(2) of the PR Regulation should, however, be presented in accordance with a PR Regulation-compliant accounting framework as set out in Article 23a of the PR Regulation and it should be audited in accordance with the PR Regulation requirements set out in the relevant PR Regulation Annexes.

Assessing the size of an acquisition

In determining whether an issuer has a complex financial history for the purposes of Article 18 of the PR Regulation, issuers and their advisers should consider the size, in aggregate, of all the acquisitions that the issuer has entered into during its track record period. This is distinct from the assessment of the size of a significant financial commitment which is set out in FCA Technical Note 619.1 Guideline 18.

The relative size of the acquired businesses in relation to the issuer for a complex financial history assessment is calculated by comparing metrics reflecting the issuer and its acquired business(es)' total assets, revenue and profit or loss. However, these measures are not prescriptive and can be substituted by metrics which are more appropriate for a business(es) operating in the issuer's industry.

We expect the figures used for the assessment of relative size to be the latest available for the acquired entities and the issuer as enlarged by the acquisition(s), as opposed to at the date the acquisition(s) took place. This ensures that the historical financial information included in the issuer's prospectus is representative of its business at present.

Where the acquisition(s) have been integrated into the issuer's business to an extent that separate financial information is no longer available, the issuer may decide to use financial information at the date the acquisition(s) took place as appropriate for the assessment of relative size.

In circumstances where assessing the size of the acquired business(es) is complex, we encourage advisers to seek guidance from us as early as possible.

Illustrative examples

We recognise that the following examples cover relatively straightforward scenarios and that in reality acquisition scenarios are more complex. The additional financial information disclosures required will depend on the facts of each case, specifically the size and timing of the acquisitions.

We encourage issuers and their advisers to contact us to discuss these requirements as early as possible if they are unsure how they may apply to them.

Example 1 Acquisition of any size taking place in earliest year of track record

Company A is planning to publish a prospectus in 202(Y). Company A acquired Company B (the target) in the year 202(Y-3) – the earliest year in its track record. As a result, the target's financial results have been consolidated into the issuer's financial information for a proportion of 202(Y-3) and for two full years, 202(Y-2) and 202(Y-1).

Company A has concluded that by including its own consolidated financials for the track record period, the prospectus contains the necessary information which is material to an investor for making an informed assessment and there are no other factors which would make the prospectus misleading if this approach was followed.

In this scenario, we would be unlikely to challenge Company A's view that no pre-acquisition information for Company B is required for inclusion in the prospectus because the consolidated financial information of the issuer covers the vast majority of the track record. This would be the case regardless of the size of the acquisition.

Example 2 Very significant acquisition taking place in latest year of track record

Company C is planning to publish a prospectus in the year 202(Y). Company C acquired Company D in the year 202(Y-1). As a result, Company D's financial results have been consolidated into Company C's financial information for the majority of 202(Y-1) only. The size of the acquisition relative to Company C is very significant in size but is not a reverse takeover on the largest of the metrics compared. Based on the size and timing of the acquisition in the track record period, for the purposes of Article 18 of the PR Regulation we expect that the prospectus would include additional pre-acquisition information for Company D.

This should consist of a minimum of one year of pre-acquisition audited financial information on the target. If the size of the acquisition relative to Company C had been at least equivalent to a reverse takeover on the largest of the metrics compared, we would expect two years of pre-acquisition information for Company D on the same basis.

Where the target's existing financial information has been used to provide Company D's pre-acquisition information in the example above, there may be a gap in the target's financial track record (i.e. between the date the target's financial information has been consolidated into that of the issuer and its last financial year end before the acquisition took place). Where it is a very short gap, we would not expect it to be filled with additional financial information unless it is determined that this information is necessary for investors to make an informed assessment.

Example 3 Significant financial commitment

Company E is planning to publish a prospectus in the year 202(Y). Company E has entered into a binding agreement to enter into a transaction to acquire Company F. The likely size of the acquisition relative to Company E is at least 25% on the largest of the metrics compared. We expect that the prospectus would include financial information for Company F. We would expect that this will consist of a minimum of one year of pre-acquisition financial information on Company F. If the size of the acquisition relative to Company E had been very significant in size but is not a reverse takeover on the largest of the metrics compared, we would expect two years of pre-acquisition information for Company F.

Other matters

For shell companies undertaking a reverse takeover, we would expect the inclusion of three years of audited financial information as required by the relevant PR Regulation Annexes in its prospectus as if the target business was itself the issuer of the prospectus.

Where a company has acquired a large number of businesses in its prospectus track record period (e.g. as part of a buy and build strategy), a case by case assessment will need to be made as to whether the issuer has a complex financial history and to the level of additional financial information on the acquired businesses in the prospectus as we encourage issuers to seek guidance from us in such cases.

Similarly, where pre-acquisition financial information is required and the target's own financial information does not provide investors with the necessary information to undertake an informed assessment (for example because the target itself has made a significant acquisition), any requirements for pre-acquisition financial information for a target's target will need to be assessed on a case by case basis.

Our approach to the inclusion of non-financial information

Similarly to the inclusion of financial information, Article 18 of the PR Regulation does not set out the specific requirements of the non-financial information in relation to other entities that is required when an issuer has a complex financial history. In practice, the non-financial information necessary to meet the requirements of the Prospectus Regulation Rules will depend on the specific facts of each case in the same way as for financial information.

The necessary information which is material to an investor for making an informed assessment will depend on a number of factors, including the nature of the transaction which is the subject of the prospectus. Issuers should in particular consider what additional information may be required on the target business in relation to risk factors, operating and financial review, litigation disclosures.

We would, for example, expect a shell company (as defined in the UK Listing Rules (UKLRs)) undertaking a reverse takeover to include all the information set out in the relevant Annexes in its prospectus as if the target business was itself the issuer of the prospectus.

However, in circumstances where an acquisition has taken place during year 202(Y-1) of the issuer's track record period or earlier, and has already been consolidated into the issuer's business for at least part of its latest financial year, we would expect the inclusion of additional non-financial information in the relevant Annexes only where it is necessary information which is material to an investor for making an informed assessment.

It remains the responsibility of the issuer to ensure the prospectus contains the necessary information which is material to an investor for making an informed assessment but we encourage issuers and their advisers to contact us to discuss these requirements as early as possible if they are unsure how they may apply to them. This may be when an issuer is in the preliminary stages of considering a listing, prior to considering a listing, or in the initial stages of preparing a prospectus. Where the prospectus is being prepared in connection with a transaction that will be the subject of a sponsor service as defined in the UKLRs, we are open to discussing these matters at an early stage in the transaction with issuers and their auditors or reporting accountants but our primary engagement on sponsor service transactions will continue to be with sponsors directly.