

DRAFT FOR CONSULTATION

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Primary Market Technical Note

Disclosures in relation to **ESG sustainability** matters, including climate change

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

Listed issuers, other issuers with securities admitted to trading on regulated markets and primary multilateral trading facilities (MTF), and other entities in scope of requirements under the UK Market Abuse Regulation (UK MAR), the Public Offers and Admissions to Trading Regulations 2024 (POATRs), and the Prospectus Regulation (~~PR~~Rules):

Admissions to Trading on a Regulated Market sourcebook (PRM) are subject to a range of disclosure requirements. The purpose of these requirements is to ensure that shareholders, investors and markets more generally are enabled to make informed decisions.

For example, pursuant to the PRPOATRs, issuers must consider what disclosures they should make to enable investors to assess (amongst other things) the assets, liabilities and prospects of the issuer and of any guarantor.

A wide range of factors may impact a ~~company's prospects~~company. Climate-related risks and opportunities are widely understood to be financially material to many ~~issuers' assets~~issuers and therefore may need to be disclosed. Other ~~environmental, social and governance (ESG)~~sustainability-related risks and opportunities are also likely to be financially material to many issuers.

Accordingly, issuers should consider ESGsustainability matters carefully when determining what should be disclosed under the PRPOATRs and PRM, as well as under the other disclosure regimes.

More broadly, disclosure obligations arise under the UK Listing Rules (UKLR) and ~~Prospectus Regulation~~PRM when an issuer's securities are ~~offered to the public~~, first listed or admitted to trading on a regulated market.

On an ongoing basis, disclosure obligations arise pursuant to the ~~UK Listing Rules~~UKLR, Disclosure Guidance and Transparency Rules (DTR) and ~~Market Abuse Regulation~~UK MAR:

- in relation to announcements and financial reporting
- on an event-driven basis given that issuers must inform the public as soon as possible of inside information which directly concerns them.

We also note that issuers should assess climate-related risks and opportunities and other ESGsustainability considerations carefully in informing their disclosures, ~~both~~ in respect of both equity and non-equity securities.

We discuss specific legislative and FCA Handbook requirements and obligations ~~set out in retained EU law~~ and how they apply in respect of ESGsustainability issues below. The examples of relevant provisions that we provide are not intended to be exhaustive.

UK Listing Rules

Listed issuers need to have appropriate arrangements in place to support their disclosure obligations under various regimes. The Listing Principles are particularly relevant in this respect.

Listing Principle 1 requires that: *"A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations."*

Related guidance in UKLR 2.2.2G further explains that this principle is intended to ensure that listed companies: *"have adequate procedures, systems and controls to enable them to comply with their obligations under the listing rules, disclosure requirements, transparency rules and corporate governance rules. In particular, the FCA considers that listed companies should place particular emphasis on ensuring that they have adequate procedures, systems and controls in relation to, where applicable [...] (2) the timely and accurate disclosure of information to the market..."*

In considering whether their procedures, systems and controls are adequate to enable them to comply with their obligations under these various regimes, including the timely and accurate disclosure of information to the market, an issuer should consider whether there is a need to access and draw on specific data sources when disclosing climate-related and other ESG sustainability-related risks and opportunities.

An issuer should also consider whether there is a need to develop specific systems, analytical instruments or organisational arrangements to collate and assess the information required to enable it to comply with its obligations.

This recognises that the appropriate consideration of climate-related and other ESG sustainability-related matters may require that an issuer accesses data sources that, unlike other indicators of organisational performance, may not typically be used for other business purposes. Furthermore, such data may need to be assessed and analysed using bespoke techniques.

In this respect, UKLR 2.2.4G further elaborates: *"Timely and accurate disclosure of information to the market is a key obligation of listed*

companies. For the purposes of Listing Principle 1, a listed company should have adequate procedures, systems and controls to be able to:

- 1. ensure that it can properly identify information which requires disclosure under the listing rules, disclosure requirements, transparency rules or corporate governance rules in a timely manner; and*
- 2. ensure that any information identified under (1) is properly considered by the directors and that such a consideration encompasses whether the information should be disclosed."*

Additionally, listed issuers should consider Listing Principle 6. This requires that: *"A listed company must communicate information to holders and potential holders of its listed securities in such a way as to avoid the creation or continuation of a false market in those listed securities."*

UKLR 6.6.6R (5) requires that a listed issuer in the equity shares (commercial companies) category includes within its annual financial report a statement of how the company has applied the Principles set out in the UK Corporate Governance Code, in a manner that would enable shareholders to evaluate how the principles have been applied.

Relatedly, UKLR 6.6.6R (6) requires the inclusion in its annual financial report of a statement as to whether *"the listed company has (a) complied throughout the accounting period with all relevant provisions set out in the UK Corporate Governance Code; or (b) not complied throughout the accounting period with all relevant provisions set out in the UK Corporate Governance Code and if so, setting out: (i) those provisions it has not complied with; (ii) in the case of provisions whose requirements are of a continuing nature, the period within which, if any, it did not comply with some or all of those provisions; and (iii) the company's reasons for non-compliance."*

The UK Corporate Governance Code and its supporting guidance explicitly recognise companies' responsibilities to wider society and provides authoritative guidance on how Boards can ensure strategic importance is given to ESG sustainability considerations that are critical to many investors.

UKLR 6.6.6R(8) and UKLR 6.6.17R require UK incorporated and overseas companies with an equity shares (commercial companies) listing to include certain statements in their annual financial report in relation to climate-related financial disclosures. These requirements

also apply to issuers in the equity shares (international commercial companies secondary listing) category, certificates representing certain securities category, non-equity shares and non-voting equity shares category and equity shares (transition) category via UKLR 14.3.24R, UKLR 15.3.1R(3), UKLR 16.3.23R and UKLR 22.2.24R. The statement should set out:

- 1.** whether the listed company has included in its annual financial report climate-related financial disclosures consistent with the TCFD Recommendations and Recommended Disclosures;
- 2.** in cases where the listed company has:
 - a.** made climate-related financial disclosures consistent with the TCFD Recommendations and Recommended Disclosures, but has included some or all of these disclosures in a document other than the annual financial report:
 - i.** the recommendations and/or recommended disclosures for which it has included disclosures in that other document;
 - ii.** a description of that document and where it can be found; and
 - iii.** the reasons for including the relevant disclosures in that document and not in the annual financial report;
 - b.** not included climate-related financial disclosures consistent with all of the TCFD Recommendations and Recommended Disclosures in either its annual financial report or other document as referred to in (a):
 - i.** the recommendations and/or recommended disclosures for which it has not included such disclosures;
 - ii.** the reasons for not including such disclosures; and
 - iii.** any steps it is taking or plans to take in order to be able to make those disclosures in the future, and the timeframe within which it expects to be able to make those disclosures; and
- 3.** where in its annual financial report or (where appropriate) other document the climate-related financial disclosures referred to in (a) 1. can be found.

UKLR 6.6.8G, UKLR 6.6.9G, and UKLR 6.6.10G in the equity shares (commercial companies) category provide guidance in relation to determining whether climate related financial disclosures are consistent with the TCFD Recommendations and Recommended Disclosures. Corresponding guidance provisions are also included in

the other listing category chapters that require climate-related financial disclosure as set out above.

UKLR 6.6.11G and corresponding guidance for other listing categories explains that the FCA would ordinarily expect a listed company to be able to *“make climate-related financial disclosures consistent with the TCFD Recommendations and Recommended Disclosures, except where it faces transitional challenges in obtaining relevant data or embedding relevant modelling or analytical capabilities.”*

UKLR 6.6.12G and corresponding guidance for other listing categories provides guidance for a listed company where making disclosures on transition plans as part of their strategy disclosures.

UKLR 10.3.1R (1) requires every circular sent by an issuer with securities in the equity shares (commercial companies) or closed-ended investment funds category to holders of its listed securities to *“provide a clear and adequate explanation of its subject matter giving due prominence to its essential characteristics, benefits and risks”*. In addition, UKLR 10.3.1R (3) requires every such circular to *“contain all information necessary to allow the security holders to make a properly informed decision”* if voting or other action is required.

In both cases, this may include in relation to ESG sustainability matters.

UKLR 1.3.3R requires that *“An issuer must take reasonable care to ensure that any information it notifies to a RIS or makes available through the FCA is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.”* Again, ESG sustainability matters may be relevant here too.

~~Listing Particulars are discussed in the next section.~~

Prospectus Regulation Rules: Admissions to Trading on a Regulated Market sourcebook

Article 6 of Necessary information

As set out in the Prospectus Regulation ~~When~~ POATRs, when a prospectus is required, it must contain the necessary information which is material to an investor for making an informed assessment of ~~(amongst other things):~~ the assets and liabilities, profits and losses,

financial position and prospects of the issuer and of any guarantor, the rights attaching to the transferable securities, and the reasons for the issuance and its impact on the issuer. That information may vary depending on the nature and circumstances of the issuer and the type of securities, the type of securities and whether transferable securities issued by the issuer have already been admitted to trading on a regulated market or primary MTF.

In order to provide adequate information to the market for this purpose, information on ~~climate change and other ESG sustainability-related matters~~ may need to be provided where relevant to the issuer. For instance, in the context of the UK Government's target to achieve net zero carbon emissions by 2050 and to achieve the goals of the Paris Agreement more generally, many companies are likely to need to consider significant changes to their business. Such changes may be material to an investor's assessment of the prospects of the company and the risks and opportunities shaping it material to an investor.

Climate disclosure rule

PRM 4.6.2R and 4.6.3R require issuers of transferable securities that are equity securities or depositary receipts over shares (excluding closed-ended investment funds, shell companies and, for the avoidance of doubt, open-ended investment companies) who have identified material climate-related risk factors, or opportunities material to the issuer's prospects to provide supporting information in a registration document or universal registration document, as applicable.

This information is specified in:

1. PRM Appendix 2 Annex 1.5R Item 5.8 for a registration document for equity securities
2. PRM Appendix 2 Annex 2.1R Item 1.1 (which cross references PRM Appendix 2 Annex 1 including Item 5.8) for a universal registration document

PRM Appendix 2 Annex 5.1R for a registration document for depositary receipts issued over shares (which cross references PRM Appendix 2 Annex 1 including Item 5.8). PRM 4.6.4G states that the TCFD Recommendations and Recommended Disclosures and the International Financial Reporting Standard S2 (IFRS S2) on Climate-related Disclosures may assist issuers in identifying climate-related

risks and opportunities and the relevant supporting information to be disclosed.

Where an issuer has published a transition plan and is disclosing a summary of key information about the transition plan in line with PRM Appendix 2 Annex 1.5R Item 5.8.3, the Transition Plan Taskforce Disclosure Framework may be of assistance in identifying the relevant information to be disclosed.

Sustainability-related information beyond climate

While the climate disclosure rule in PRM 4.6.2R and 4.6.3R only applies to the disclosure of climate-related information, wider sustainability-related information may constitute necessary information where this is material to an investor making an informed assessment of, for example, the assets, liabilities and prospects of the issuer and of any guarantor. Issuers may find International Financial Reporting Standard S1 (IFRS S1) helpful in identifying relevant sustainability-related risks and opportunities and information to disclose. To identify relevant issues and metrics specific to their industry, issuers may also consider the sources of guidance referenced in IFRS S1, such as the Sustainability Accounting Standards Board (SASB) standards.

Non-equity securities

The climate disclosure rule in PRM 4.6.2R and 4.6.3R applies only to issuers of equity securities and issuers of depositary receipts over shares (excluding closed-ended investment funds, shell companies and, for the avoidance of doubt, open-ended investment companies).

However, for issuers outside of scope of the climate disclosure rule but still required to produce a prospectus, the necessary information requirements set out in Regulation 23 of the POATRs continue to apply. Climate and other sustainability-related information may constitute necessary information where this is material to an investor for making an informed assessment of, for example, the assets, liabilities and prospects of the issuer.

The information may vary depending on the nature and circumstances of the issuer, the type of transferable securities, and whether transferable securities have already been admitted to trading on a regulated market or primary MTF. Regulation 23(3) of the POATRs specifies that references to the prospects of the issuer and any

guarantor are to be read, in relation to non-equity securities, as a reference to the creditworthiness of the issuer and of any guarantor. Regulations 23(4) and 23(5) of the POATRs outline requirements for various types of asset-backed or asset-linked securities.

Issuers of sustainability-labelled non-equity instruments

Another example where issuers will need to consider if additional information should be disclosed to meet the necessary information requirement is under PRM 4.7. PRM 4.7.1R requires a statement in the prospectus as to whether a non-equity security has been:

1. marketed as green, social, sustainable or sustainability-linked, or
2. issued under a bond framework or equivalent document on green, social, sustainable or sustainability-linked financing published by the issuer, a subsidiary of the issuer or an entity in the issuer's group.

In this case, under PRM 4.7.2G issuers must consider what further supporting information is required to satisfy the necessary information requirement. Supporting Handbook guidance as to the information that this may include can be found in PRM 4.7.3G to PRM 4.7.5G.

Sustainability-related information that qualifies as Protected Forward-Looking Statements

The Public Offers and Admissions to Trading regime includes the concept of a Protected Forward-Looking Statement (PFLS), as defined in PRM 8.1.3R.

As noted in PRM 8.1.3R(1)(a), PFLS disclosures are statements that contain either financial information in accordance with PRM 8.1.7R or operational information in accordance with PRM 8.1.8R.

Sustainability-related information may be either financial or operational information depending on the nature of the information. To be considered PFLS, sustainability-related information must meet the requirements of PRM 8.1.3R, which therefore includes meeting the requirements of either PRM 8.1.7R or PRM 8.1.8R.

Furthermore, where the disclosure is required by the rules in PRM in accordance with the corresponding PRM App 2 annexes, such as the climate disclosure rule under PRM 4.6.2R, the information disclosed cannot be a PFLS unless it is the information referred to in certain

parts of the PRM App 2 Annexes as specified in PRM 8.1.4R. Those parts of the PRM App 2 Annexes specified in PRM 8.1.4R include:

- Item 5.8.2, PRM App 2 Annex 1.5 - A description of the actual and potential impacts of climate-related risks and opportunities on the issuer's businesses, strategy and financial planning.
- Item 5.8.3, PRM App 2 Annex 1.5 - If the issuer has published a transition plan, where the contents are material, a summary of key information about the transition plan and where it may be located and inspected.
- Item 5.8.5, PRM App 2 Annex 1.5 - If material, a description of the metrics and targets used to assess and manage relevant climate-related risks and opportunities.

Further details on PFLS can be found in Technical Note 639.

Simplified disclosure regime for secondary issuances

Under PRM 7, a simplified prospectus may be appropriate for the purpose of an admission to trading of equity securities to a regulated market that have already been admitted to trading on a regulated market or an SME growth market. The prescribed content of these prospectuses is set out in PRM 7.1.4R.

Issuers will still need to meet the necessary information requirement under Regulation 23 of the POATRs in these situations. However, under Regulation 23(2)(d), the level of information that should be disclosed to the market may vary in these cases, reflecting the fact that the relevant securities have already been admitted to trading on a regulated market or SME growth market.

Any sustainability-related disclosures included in a simplified prospectus should reflect, and be aligned with, the above.

Risk factors~~Article 14 of the Prospectus Regulation~~

~~As a derogation from Article 6, the relevant reduced information to be presented in the simplified prospectus for secondary issuances is that necessary to enable investors to understand the prospects of the issuer and any significant changes in the business and financial position of the issuer since the end of the last financial year. This~~

information should be written and presented in such a way as to allow investors to make an informed investment decision.

Risk factors

Recital 54 of the Prospectus Regulation addresses risk factors that are required by the PR and makes specific reference to environmental, social and governance factors. The recital states:

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The primary purpose of including risk factors in a prospectus is to ensure thatenable investors to make informed decisions by understanding the key risks involved. Under PRM 4.5.1R, risk factors should be:

- Material: material for making an informed assessment of such risks and thus take investment decisions in full knowledge of decision.
- Specific: tailored to the issuer and/or to the transferable securities.
- Supported: corroborated by information disclosed elsewhere in the registration document and the securities note.

Under PRM 4.5.2R, the issuer or the person asking for admission to trading must assess the materiality of the risk factors based on the probability of the facts, their occurrence and the expected magnitude of their negative impact.

Risk factors should ~~therefore be limited to those risks which are material~~clearly and ~~specific to~~adequately drafted to provide investors with a transparent understanding of how the issuer ~~and/or its securities and which are corroborated by the content of the prospectus. A prospectus should not contain risk factors which are generic and only serve as~~transferable securities may be affected if a particular risk materialises. Generic disclaimers should be avoided, as ~~those could~~they can obscure more relevant and specific risk factors that ~~investors should be aware of risks,~~ thereby preventing the prospectus from presenting information in an easily analysable, concise and comprehensible form. Among others, environmental, social and governance circumstances can also constitute specific and material risks for the issuer and its securities and, in that case, should be disclosed. To help investors identify the most material risks, the issuer should adequately describe and present each risk factor in undermining the clarity and usefulness of the prospectus. A

Sustainability-related risks, such as climate-related risks, may also be material and specific. Where relevant, these should be disclosed in a manner consistent with other parts of the prospectus. For example, if climate-related risks are identified under PRM 4.5.1R, certain issuers must also comply with the climate-related disclosure rule set out in PRM 4.6.2R as set out above.

To assist investors in identifying the most significant risks:

- Each risk factor should be adequately described and presented in a limited number of categories depending on their nature - in each category, the most material risk factors (as assessed according to PRM 4.5.2R) must be mentioned first.
- Where a prospectus summary is required under PRM 2.5, a brief description of the most material risk factors ~~selected by~~ specific to the issuer, the transferable securities and the guarantor should be included in the summary.” section of the prospectus.

~~Relatedly, in 2019, ESMA published a set of Guidelines on risk factors under the Prospectus Regulation. Guideline 7 on the presentation of risk factors across categories is accompanied by explanatory paragraph 35 which notes that ESG related risks could form a specific category. Climate change and other ESG factors might also be relevant to other suggested categories of risks, including ‘Legal and regulatory’. The ESMA Guidelines provide an example of how ESG risk factors could be disclosed.~~

Annexes to the

Prospectus Rules: Admissions to Trading on a Regulated Market sourcebook

Various appendices to the Delegated Prospectus Regulation (EU 2019/980)

~~Various annexes to the Commission Delegated PRM~~ require relevant disclosures including an overview of the business and a description of the regulatory environment.

Item 5.7.4. in Appendix 2 Annex 1.5 requires a description of any environmental issues that may affect the issuer’s utilisation of its tangible fixed assets. Item 9.1 in Appendix 2 Annex 1.9 requires, on the other hand, a description of the regulatory environment that the

issuer operates in and that may materially affect its business, together with information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations. Therefore, if the regulatory environment includes environmental matters, they will have to be disclosed, if material.

~~Item 2.5.1 in Annex 24, requires smaller issuers adopting the UK Growth prospectus specifically to address environmental matters in covering, to the extent necessary for an understanding of the issuer's business as a whole, an analysis of the development and performance of the issuer's business and its position. The analysis shall include both financial and, where appropriate, non-financial Key Performance Indicators relevant to the particular business, including information relating to environmental and employee matters. This analysis shall, where appropriate, also include references to, and additional explanations of, amounts reported in the annual financial statements.~~

~~Similarly, FSMA requires Listing Particulars to contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of the prospects of the issuer of the securities.~~

The FCA Guidelines on disclosure requirements under the Prospectus Regulation Rules: Admission to Trading on a Regulated Market (PRM) and Guidance on specialist issuers (Primary Market/TN/619.12) contains helpful guidance in a number of areas relevant to ESG sustainability considerations. This includes guidance on environmental and employee key performance indicators in the context of the operating and financial review (paragraph 28) and identifying factors to consider when preparing profit forecasts (paragraph 5051). Specific requirements for mineral companies are set out in paragraphs ~~131-133~~132-135 of the Guidance on specialist issuers and in Appendices I, II and III. Appendices II and III also contain specific requirements for the Mining and Oil and Gas Competent Persons' Report.

~~UKLR 23.2 contains further detail on the Listing Particulars and their content, including minimum information requirements.~~

Disclosure Guidance and Transparency Rules (DTR)

Issuers have a number of ongoing disclosures obligations. These disclosures are primarily intended to allow shareholders, investors and the market at large to form a view on the value of traded securities.

Implicit in this is that investors need to be put in a position to be able to assess the prospects of the company and the risks and opportunities shaping it.

In order to provide adequate information to the market for this purpose, information on climate change and other ~~ESG~~sustainability-related matters may need to be provided where relevant to the issuer. ~~For instance, in the context of the UK Government's target to achieve net zero carbon emissions by 2050 and to achieve the goals of the Paris Agreement more generally, many companies are likely to need to consider significant changes to their business. Such changes may be material to an investor's assessment of the prospects of the company and the risks and opportunities shaping it.~~

The ~~Disclosure Guidance and Transparency Rules (DTR)~~ require that the Management Report in the Annual Financial Report and the Interim Management Report in the Half-Yearly Financial Report contain a description of the principal risks and uncertainties facing the issuer (DTR 4.1.8R and DTR 4.2.7R, respectively).

The Management Report in the Annual Financial Report must also contain a fair review of the issuer's business. DTR 4.1.9R requires the inclusion in that review, to the extent necessary for an understanding of the development, performance or position of the issuer's business, of analysis using, where appropriate key performance indicators. This should include information relating to environmental matters and employee matters where appropriate.

DTR 7.2 requires an issuer to include a corporate governance statement in its directors' report, or in a separate report published with its annual report or made available on its website. DTR 7.2 includes information requirements in relation to any relevant corporate governance code (DTR 7.2.2R and DTR 7.2.3R), the issuer's internal control and risk management systems in relation to the financial reporting process (DTR 7.2.5R), and the diversity policy applied to the issuer's administrative, management and supervisory bodies (DTR 7.2.8AR).

DTR 1A.3.2R requires an issuer to “take all reasonable care to ensure that any information it notifies to a RIS is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.” This may include in relation to ~~ESG~~sustainability matters.

UK Market Abuse Regulation (~~MAR~~)

Pursuant to Article 17 of UK MAR, an issuer must publicly disclose inside information that directly concerns them as soon as possible, unless the conditions for delay are met. This includes any inside information that relates to climate change and other ~~ESG~~sustainability-related matters.

Article 17(1) clarifies that “*The issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public...*”

When disclosing climate-related and other ~~ESG~~sustainability-related information, an issuer must not do so in a way (for example by omitting information) that breaches the prohibition of market manipulation under Article 15 of UK MAR, noting the relevant behaviours defined in Article 12 of UK MAR that amount to market manipulation. These include, but are not limited to, dissemination of information which is likely to give false or misleading signals as to the supply of, demand for, or price of a financial instrument.

In this regard, recital 47 adds: “*The manipulation or attempted manipulation of financial instruments [...] may consist in the invention of manifestly false information, but also the wilful omission of material facts, as well as the knowingly inaccurate reporting of information.*”