

Primary Market Bulletin



March 2012
Issue No. 1

Newsletter from the FSA for primary market participants

Introduction

Welcome to the first edition of *Primary Market Bulletin*. This new bulletin aims to provide broad coverage of issues that are relevant to issuers, sponsors, advisers and other persons who engage with the UK Listing Authority (UKLA).

Replacing *List!*, *Primary Market Bulletin* is our new way to communicate and discuss a range of issues with our market participants, ranging from the factual, such as this first edition, to the technical, for example consultation on amendments to our Technical Notes and our Procedural Notes (Notes).

The bulletin will usually consist of two sections. The first will provide a brief discussion on proposed revisions to the Notes, as well as any other factual communication which will not result in any change to the Notes. The second section will set out the text of the proposed amendments to the Notes which we are consulting on. We aim to update the Notes with the proposed amendments approximately four weeks after publishing the bulletin having regard to any responses received. The Notes that we publish following the consultation process will constitute FSA guidance. Please see the Reader's Guide (www.fsa.gov.uk/pages/Handbook/readers_guide.pdf) for a summary of the legal effect of guidance.

This inaugural edition is dedicated in its entirety to communicating the outcome of the detailed review of the UKLA helpdesk that we carried out during 2011. We also provide further background to our proposals for providing individual guidance, which we are currently consulting on (in our [Quarterly Consultation paper No 32](#)).

If you have any comments please email us at: primarymarketbulletin@fsa.gov.uk

Review of UKLA helpdesk and proposals for providing individual guidance

Background

In *List! Issue 26* we set out the main findings of our 2010 Market User Survey, which assessed the UK Listing Authority's performance in key areas of its role

and measured whether this performance had improved or declined since the first survey was undertaken in 2007. The 2010 survey reflected that there had been improvements in many areas of the UKLA helpdesk function. However, it was also clear from the results that some of our stakeholders still had concerns about the operation of our helpdesk.

While recognising that running a technical helpdesk will always present difficult challenges, we were conscious that we had received some strong and consistent feedback in this area. So we decided to conduct a fuller review of the UKLA helpdesk function to enable us to give a more informed response to this feedback.

We reported back to the Listing Authority Advisory Committee (LAAC) on our findings and proposals in November last year and received broad support for our proposals. We now welcome the opportunity to report back more widely to our market participants on the outcome of the detailed review and to explain fully the background to the proposals for providing individual guidance, which we are currently consulting on (in our [Quarterly Consultation paper No 32](#)).

Scope of the UKLA helpdesk review

The scope of the UKLA helpdesk review covered the technical advice that we provide on the Prospectus and Listing Rules and the Disclosure and Transparency Rules via the Equity, Debt and Company Monitoring helpdesk options. Our review did not encompass an examination of the Listing Applications, Administration or the Sponsor Supervision options on the UKLA helpdesk.

Nature of the review

The principal constituent of the helpdesk review was a detailed analysis of the calls received on the Equity, Debt and Company Monitoring options of the helpdesk. This was an extensive exercise, as although our telephone lines are recorded, this functionality does not provide any means of analysing data from those calls.

For the Equity helpdesk option we recorded and analysed call data from August 2010 until the end of February 2011. For the Debt and Company Monitoring helpdesk options we recorded and analysed call data for the period from January 2011 until the end of May 2011. We carried out further recording and analysis across all three of these helpdesk options during the month of July 2011, to determine what proportion of calls we deemed as 'reasonable requests' for individual guidance.

We followed the initial data collection exercise by asking for more specific feedback from a small number of sponsor firms which were the highest users of the UKLA Equity helpdesk during the initial period reviewed. We also sought specific feedback from a number of law firms via our Debt Relationship Management Programme.

Detailed analysis of the helpdesk calls

Equity helpdesk

We began recording call data on the Equity helpdesk during August 2010 and continued this until the end of February 2011. During this 28 week period we recorded a total of 568 calls, which equates to approximately 20 calls per week.

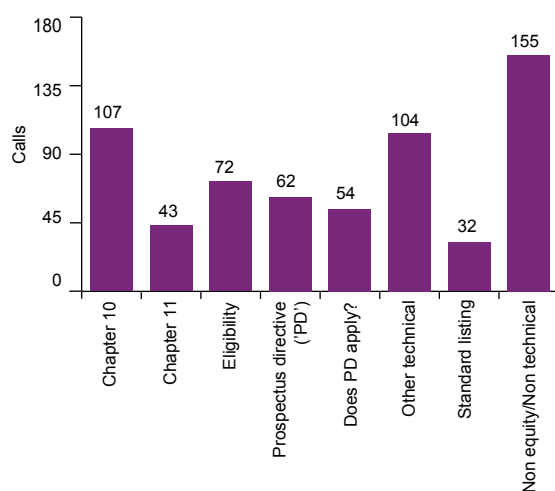
Callers to the Equity helpdesk August 2010 – February 2011



The profile of the callers to the Equity helpdesk was as follows (see pie chart top left):

The analysis shows that there was an equal proportion of calls from sponsor firms and law firms. Of the 137 calls classified as being from 'Other firm', 62 calls (or 11% of the total calls) were received from individuals who were unwilling to give us their own or their firm's contact details. Our view is that this is not an acceptable basis upon which to communicate with us and we have instructed our staff that they should no longer deal with calls of this nature.

Nature of query to the Equity helpdesk August 2010 – February 2011



The calls in the chart above exceed the total calls recorded of 568 as one query can encompass more than one of the technical areas identified

The nature of the queries that we received during this period can be further analysed in the bar chart on the left.

The chart shows that there was a significant proportion of calls, 155 or 27% of the total calls recorded that were not of a technical nature. A high-level review of these calls shows that typically, a caller selected the incorrect helpdesk option, was enquiring about the identity or telephone number of readers on a specific case or the applicable fees. The number of calls categorised as being in relation to chapters 10 and 11 of the Listing Rules (LRs) or which were in respect of eligibility totalled 217 (as adjusted for calls where more than one of these technical areas were covered) or 38% of the total calls. These are areas where it is typically necessary for issuers and their advisers to send in a written query in order for us to resolve them satisfactorily. So, a total of 372 calls, or 65% of the calls sampled, were either of a non-technical nature or were regarding areas of our rulebooks where we generally require a written request to resolve queries effectively.

The analysis also demonstrated that there was a significant proportion of calls (73 calls or 13% of total calls) from law firms concerning areas of the Handbook where the issuer is required to appoint a sponsor e.g. chapters 10 and 11 of the LR's.

Debt helpdesk option

Regarding the debt helpdesk option we recorded and analysed data for the period from January 2011 until the end of May 2011. For this 20 week period we received a total of 572 calls, which equates to approximately 29 calls each week.

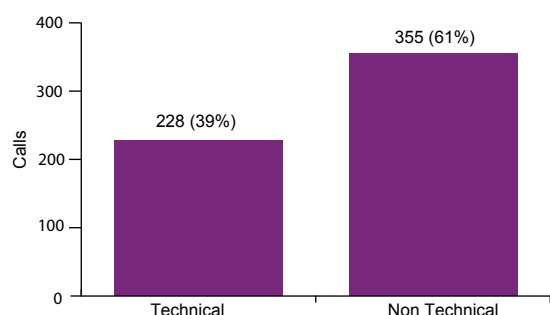
Nature of callers to the Debt helpdesk January 2011 – May 2011



The profile of the callers to the Debt helpdesk during this period was as follows (see pie chart top left):

The users of the debt option on the UKLA helpdesk are predominately the law firms (63% of calls) with a smaller proportion of calls from issuers (8%). The large ‘Magic Circle’ law firms accounted for approximately 40% of the calls received on the debt helpdesk option during this period. During this period 177 of the calls (31% of total calls) received by the Debt helpdesk were calls where the caller was unwilling to give their own details. As discussed above, our view is that this is not an acceptable basis upon which to communicate with us and we have also instructed our staff on the Debt helpdesk not to deal with calls of this nature.

Nature of the queries to the Debt helpdesk January 2011 – May 2011



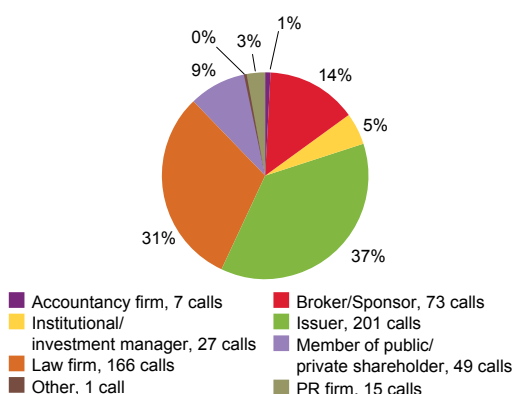
The nature of the queries received by the Debt helpdesk during the period reviewed can be analysed as follows (See bar chart on the left):

The profile of the nature of the calls on the debt helpdesk for this period showed that 61% of calls were of a non-technical nature with 39% of calls relating to a technical query. In line with the experience of the Equity helpdesk, the non-technical calls are typically where the caller selects the wrong helpdesk option, is enquiring about readers on their transaction, applicable fees or the appropriate checklists. A high-level review of the calls with technical content showed that most of these were straightforward and could be answered by reference to the UKLA website. The nature of the calls reflects the fact that most of the complex queries regarding debt securities are dealt with by the law firm’s relationship manager under the Debt Relationship Management Programme.

Company monitoring helpdesk option

We received and analysed details of 539 calls on the Company Monitoring option of the UKLA helpdesk during the 20 week period from the beginning of January 2011 until the end of May 2011. This corresponds to an average of 27 calls per week.

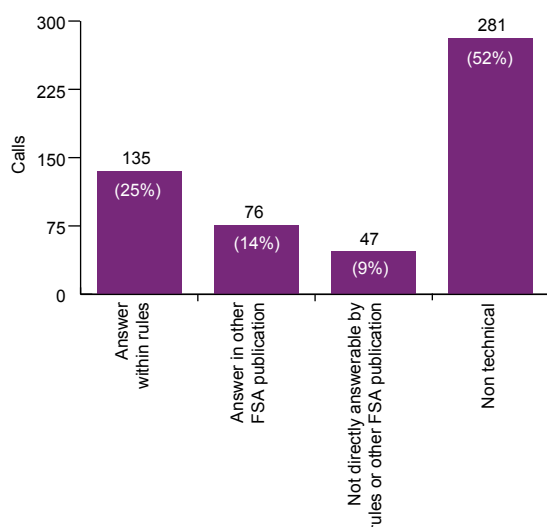
Callers to the Company Monitoring helpdesk January 2011 – May 2011



The profile of the callers to the Company Monitoring helpdesk during this period can be illustrated as follows (see pie chart bottom left):

The users of the Company Monitoring option on the UKLA helpdesk are predominately issuers (37%) and law firms (31%) with a smaller proportion of calls from Sponsor firms (14%). A high-level review of the calls shows that the areas of the rules where the queries from issuers and law firms were concentrated were the continuing obligations in Chapter 9 of the LRs, DTR 3 in respect of director dealings and DTR 5 regarding major shareholder disclosures.

Nature of queries to the Company Monitoring helpdesk
January 2011 – 2012



The profile of the type of queries received by the Company Monitoring helpdesk can be illustrated as follows (see bar chart on the left):

The chart shows that 281 calls (52% of total calls) were of a non-technical nature. A high-level review of these calls shows that they were typically where the caller had chosen the incorrect helpdesk option, required another FSA department, or were enquiring where to find the UKLA rulebooks.

A detailed review of the calls with some technical content showed that a further 25% of the total calls could be answered if the caller had referred to our rulebooks. In addition, a further 14% of calls could be answered by reference to another FSA publication, typically the UKLA website. Only the remaining 47 calls (9% of total calls) represented a call that constituted a genuine technical query. A further analysis of the call data shows that for

the 201 calls received from issuers, only 6% (13 calls) were for queries that could not be answered by reference to either the rulebooks or on-line guidance. For law firms this figure was 14% (23 calls) and for sponsor firms it was 12% (20 calls).

Reasonable requests for individual guidance analysis

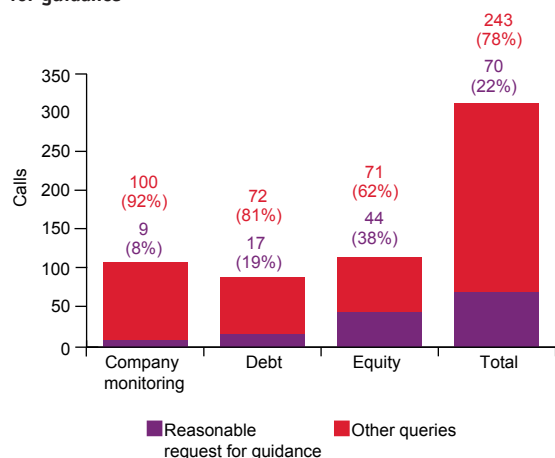
The UKLA helpdesk is the method by which we provide market participants with individual guidance. Providing individual guidance is an important function of the FSA, which is described in the FSA Handbook at SUP 9.2. In particular, SUP 9.2.5 describes the provision of individual guidance in the following terms:

‘The *FSA* will aim to respond quickly and fully to reasonable requests. The *FSA* will give high priority to enquiries about areas of genuine uncertainty or about difficulties in relating established requirements to innovative practices or products. What constitutes a ‘reasonable request’ is a matter for the *FSA*. It will depend on the nature of the request and on the resources of the *firm* or other *person* making it. The *FSA* will expect the *person* to have taken reasonable steps to research and analyse a topic before approaching the *FSA* for individual *guidance*. The *FSA* should not be viewed as a first port of call for *guidance*, except where it is only the *FSA* that can give the *guidance*, for example in confirming non-standard reports that it wishes to receive from a *firm*.’

With this in mind, we carried out further analysis of calls received to the Equity, Debt and Company Monitoring options on the UKLA helpdesk during the month of July 2011. We analysed the calls received so we could identify the proportion of calls which, in our view, were ‘reasonable requests’ for guidance. We excluded the following types of calls from our analysis of ‘reasonable requests’ for guidance: non-technical calls; calls which could be answered easily by reference to the rules or to technical content on the UKLA website; and, calls where we would expect

the query to be easily resolved if the caller had used the resources available to them within their own firm.

UKLA Technical helpdesk calls – ‘Reasonable’ request for guidance



The results of our analysis is shown in the bar chart on the left:

The table shows that during July 2011, 22% of the total calls received by the Equity, Debt and Company Monitoring helpdesks were in our view ‘reasonable requests’ for guidance. The remaining 243 calls (78% of calls) were either purely non-technical in nature or were of a straightforward nature, capable of being easily answered by referring to our rulebooks, our website or by further consultation within the individual’s own firm. This equates to approximately 60 calls per week where, in our view, the UKLA is being used as a first port of call for advisers to seek guidance and in many cases the guidance being sought is not of a technical nature.

A further review of the Equity helpdesk calls showed that, of the 44 calls that were deemed to be ‘reasonable requests’ for guidance, 50% of these calls were about eligibility and chapters 10 and 11 of the Listing Rules. As discussed above, these are areas where our ability to provide guidance is limited as the queries typically require a written enquiry to clarify the issues and facilitate us giving a clear response.

‘No names’ queries

The majority of calls to the UKLA helpdesk are made on a ‘no names’ basis where the adviser does not wish to tell us the identity of the issuer to which the query relates. While we recognise that advisers value the flexibility of being able to request technical guidance on a ‘no names’ basis, we are concerned that providing guidance on this basis presents very real and significant risks, both for the UKLA and for the advisers who seek to rely on such guidance.

Our experience shows that we are often in the position of being asked to provide individual guidance on a ‘no names’ basis when we are not fully informed about the facts of the case. This is a risk in itself as the advisers are in a position where they are giving advice to the issuer that could potentially be misleading and could affect the issuer’s decisions about the transaction. It also means that when we are formally approached on a named basis, and we can see the whole context of the case, we may have to re-open advice previously given on a much shorter timescale, which does not represent an efficient use of our resources and does not produce a satisfactory outcome for the adviser and the issuer.

Resourcing the UKLA helpdesk

It was clear from the feedback we received, from sponsors particularly, that the advisory firms we deal with are not clear about how we staff the UKLA helpdesk.

The people who answer the telephone on the Debt and Equity helpdesk options are from the same teams that vet documents submitted to us for approval. From a Company Monitoring perspective, the same staff deal with helpdesk calls while carrying out real-time market monitoring.

So operating and resourcing the UKLA helpdesk function has a real impact on our ability to carry out our other core functions. In prioritising how we allocate our resources we have to be aware of our statutory duty to ensure that we use our resources in the most efficient and economic way.

Feedback from sponsor firms

Following the initial analysis of calls received by the UKLA helpdesk, we sought further feedback from four sponsor firms that used the Equity helpdesk most frequently during the period reviewed (as demonstrated by the call analysis). We asked them about their experience of the UKLA helpdesk in terms of turnaround times, expertise of the UKLA staff, consistency of response and also the frequency of request for written submissions.

Turnaround times

The feedback from the sponsor firms was on the whole positive in terms of turnaround times, with all the sponsor firms noting that we respond to queries within the UKLA's published turnaround times. However, there was some feedback that we used our full turnaround time, even when the query was straightforward. There was also recognition that UKLA helpdesk staff members were receptive to responding more quickly than prescribed when they were made aware that a query was urgent.

Turnaround times should be considered in the context that helpdesk queries are being handled by UKLA staff members who are managing a workload of document vetting, and also that some queries are complex and require staff to escalate them within the UKLA. In response to this, we have reminded our staff that when they receive written queries they should give them a high-level review to assess complexity and also to ensure they can quickly ask for any missing information, so we can give a full response within the turnaround time.

Expertise of helpdesk staff

In terms of expertise of the helpdesk staff, all of the sponsor firms responded positively that the expertise of the helpdesk staff has improved and that their level of experience is no longer an issue.

Consistency of technical response

One of the areas that we commented on in *List! 26* was consistency of technical response and we stated that that we were happy to receive further feedback on this issue. We therefore took the opportunity when we met with four sponsor firms to ask them about their experience of consistency of technical response, both in terms of the helpdesk and also in the context of document vetting. The

feedback was positive from all four sponsor firms in terms of consistency of the technical advice given on helpdesk. In terms of document vetting, again the feedback was on the whole very positive. Two of the sponsor firms felt that in a small number of instances we had not been consistent in our approach on documents, but the overall view was that our technical consistency had improved.

Written submissions

Sponsor firms acknowledged that for complex queries it might be necessary to provide a written enquiry. However, they also said this means more process for them. Sponsor firms also expressed a strong desire to be able to rely on precedent.

It is worth reminding advisers that due to the very specific and often complex nature of many of the queries received on the helpdesk, the decisions are made on a case-by-case basis. If an adviser is aware of a previous decision made on the same facts they have the option of providing us with the details and we may take it into account.

Feedback from law firms

We asked some of the law firms who frequently use the UKLA Debt helpdesk about their experience of the UKLA helpdesk in terms of turnaround times, expertise of the UKLA staff, consistency of response and also the frequency of request for written submissions. Due to the existence of the Debt Relationship Management Programme for many of the law firms, their use of the Debt helpdesk differs from the Equity and Company Monitoring technical helpdesks. Generally the feedback received was positive in all areas for those firms who used the helpdesk outside of the Relationship Management Programme.

Issues arising from the helpdesk review and proposals for UKLA provision of individual guidance

We have found the process of collecting and analysing the helpdesk data extremely informative. We are particularly concerned about the level of calls that we receive and deal with which are not of a technical nature. Our analysis shows that the proportion of calls that we receive on the helpdesk which constitute 'reasonable requests' for guidance is typically very low across the three technical helpdesk options (22% as recorded in July 2011). Our analysis of the call data has raised concerns that the helpdesk is not operating particularly effectively as a means of providing individual guidance. Furthermore, we are concerned that it is not an efficient use of our resources to respond to such a high proportion of calls that are either purely non-technical in nature, or are so straightforward that they are capable of being answered without using the UKLA helpdesk. Finally, the fact that we have a significant proportion of callers who do not wish to divulge their details to us is very surprising and we feel that this is not an acceptable basis upon which to communicate with us.

So the results of our review of the UKLA technical helpdesk have prompted us to consider making some difficult decisions around how we can provide individual guidance in an efficient manner. While we recognise that our proposed changes to the helpdesk may not be seen to directly address the stakeholder concerns highlighted by the Market User Survey, conducting the helpdesk review prompted us to think much more fundamentally and broadly about how we can provide individual guidance in a more effective and efficient manner, rather than necessarily how we provide a helpdesk service. We are consulting on the changes we are proposing in our quarterly consultation paper ([Quarterly Consultation paper No 32](#)).

Ongoing communication

With regard to written responses to requests for individual guidance SUP 9.2.1 states that:

‘Simple requests for guidance may often be dealt with orally, although it is open to a person to seek a written confirmation from the FSA of oral guidance given by the FSA.’

Given the nature of the proposals we are now consulting on, we would like to assure our stakeholders that the UKLA would welcome requests for written confirmation of guidance given. We would also anticipate responding in writing within our current turnaround times.

When we discussed our proposals for the UKLA helpdesk with LAAC, the committee urged caution in terms of ensuring that our existing mutually beneficial relationships with market participants do not suffer as a consequence of the proposed changes to the UKLA helpdesk. Should our proposals proceed, we will endeavour to ensure that in the case of matters of significant impact or urgency that market participants feel reassured that they have sufficient access to the UKLA at the appropriate level. It is worth highlighting that the UKLA offers a range of other forums (LAAC included) for more generic discussions about our policy position e.g. the regular meetings with the major law firms (CLLS) and the quarterly Accountancy Forum with the major accountancy firms.

Possible timing of implementation of the proposals for individual guidance

The timing of the implementation of the proposals for the provision of individual guidance is dependent on the Handbook changes that are currently being consulted on in our Quarterly Consultation paper. Subject to the outcome of the consultation, we anticipate being in a position to implement our proposals in full on 1 September 2012. We will provide further updates on our progress towards this in advance of that date.

Sponsor Supervision telephone line

Although the Sponsor Supervision telephone line was not subject to a detailed review, we are aware that this option on the helpdesk receives an extremely low volume of calls. This reflects the fact that most sponsor firms have a designated contact within the Sponsor Supervision team. We anticipate that as part of implementing the helpdesk proposals the Sponsor Supervision telephone line would no longer be available.

UKLA website

The UKLA website will be updated in order to make it more user-friendly. We recognise that the current organisation of the UKLA website makes it difficult to navigate efficiently and often results in our stakeholders having to contact us directly. We intend to update the website format so that it is navigable by user group e.g. issuers (and their advisers), investors (and their advisers), sponsors, and the general public and so that technical content is much easier to find. We are aiming to implement this change in by the end of the second quarter of this year and we are planning further improvements and updates to the website throughout the remainder of 2012.