

Primary Market Bulletin

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Newsletter from the FSA for primary market participants

Introduction

Welcome to the 4th edition of Primary Market Bulletin.

In this edition, we return to the UKLA Knowledge Base consultation we launched in Primary Market Bulletin (PMB) No. 2.

As explained in PMB No. 2, the UKLA Knowledge Base is our new online repository for formal guidance notes, offering practitioners guidance on a number of aspects of the Listing Rules (LR), the Prospectus Rules (PR) and the Disclosure and Transparency Rules (DTR).

We are very pleased to announce that, following consultation, we are proceeding with the UKLA Knowledge Base and it is now available on our website.

In this edition of Primary Market Bulletin, we introduce the new UKLA Knowledge Base to market participants and explain how it will work. We also outline the feedback we received from respondents to our consultation on the initial content of the Knowledge Base and provide our response to this.

About the UKLA Knowledge Base

The Knowledge Base is the single repository of technical guidance published by the UKLA in relation to the PR, LR and DTR and it is now available on our website. Its principal content comprises 80 guidance notes, which are divided into two series: Procedural Notes and Technical Notes. The Knowledge Base also carries links to other useful resources, for example to our rule books, forms and checklists.

Each note addresses a specific topic which, in our experience, merits further elaboration in order for practitioners, issuers, sponsors and other stakeholders to understand how we interpret and understand aspects of the LR, PR and DTR. The notes are often relatively short and concise. To assist navigation, the notes have been presented thematically in 14 categories and we hope to introduce a search capability in the near future to make the material more accessible. Each note has been assigned a unique referencing number, in order to assist discussion and citation of the material.

We intend to keep the Knowledge Base up-to-date by consulting on and publishing new notes as and when the need arises and by revising the existing guidance notes when necessary. The referencing system, explained in detail in section 2 of PMB No. 2, includes version numbers, so that if guidance notes are revised in the future, the reference number will clearly show that it is a revised version.

The notes contained in the UKLA Knowledge Base constitute formal FSA guidance under FSMA. For a summary of the legal effect of FSA guidance, please see our Reader's Guide to the Handbook for further detail.

http://www.fsa.gov.uk/pages/Handbook/readers_guide.pdf

If market participants require additional guidance from the UKLA, we will respond to reasonable written requests for individual guidance. In urgent 'live market' situations (for example, situations which require individual guidance on DTR 2 and which could result in a suspension), market participants can also call our emergency line and request individual guidance by telephone. Sponsors can also use our new Sponsor Service Enquires facility. Please refer to PMB No. 3 for information on obtaining individual guidance in this manner or see our website. www.fsa.gov.uk/doing/ukla/guidance

Consultation feedback

Overview

In PMB No. 2 we consulted on the initial content of the UKLA Knowledge Base.

We consulted on 82 draft guidance notes arranged into two series – Technical Notes and Procedural Notes. 71 of the notes were based on material previously published in either our old List! newsletters or our 2010 technical and procedural notes (the 2010 Notes). The remaining 11 notes were newly proposed. The consultation can be accessed here:

http://www.fsa.gov.uk/library/policy/guidance_consultations/2012/1208

The consultation period ended on 24 August 2012. We received written feedback from 13 respondents and are most grateful to those stakeholders who took the time to scrutinise the notes and offer their comments.

The feedback was broadly supportive of our initiative to create the Knowledge Base and its proposed content. What is very clear from the consultation is that our stakeholders support our desire to be as transparent as possible about how we understand our rules and to be as responsive to the need for clarification as we possibly can. As a result, we are proceeding broadly as consulted and we have now launched the UKLA Knowledge Base with an initial content comprising 80 of the 82 guidance notes consulted on. We have made a small number of revisions to 29 of these notes following the consultation (as explained below), as well as revisions to reflect changes resulting from the publication of rules in CP12/25 (the majority of which came into force on 1 October 2012).

General themes

Much of the feedback we received related to specific notes (please see below). However, we recognised some general themes in the feedback received and have summarised the salient points of this feedback below.

1. Omission of previously published material

71 of the 82 guidance notes consulted on were based on previously published material, mainly our old List! newsletter and the 2010 Notes. Respondents commented that a number of sections in these publications had not been turned into guidance notes and were not included in the consultation.

- **Our response:** Respondents are correct that not all previously published UKLA commentary has been included in the UKLA Knowledge Base. In preparing the new guidance notes for consultation, we reviewed the 2010 Notes and considered which sections should be included. Although it is difficult to generalise editorial decisions, material was generally omitted for four main reasons:
 - we were already consulting on incorporating sections of our existing commentary into the LR through new rules or guidance in CP 12/2;
 - the commentary referenced a matter of law or regulation that had since changed;
 - the material or remark was ‘time-bound’, speaking of a specific situation at a specific time; or
 - we did not think the point made was suitable for formal guidance.

However, one of the lessons we have drawn from this consultation is that there is a demand from our stakeholders for more formal guidance on applying the LR, PR and DTR. To the extent possible (and subject to, we should caution, resource and other constraints), we will try to meet this demand by consulting on new notes in the future. We aim for the Knowledge Base to be dynamic and responsive, carrying material that responds to the needs of practitioners, issuers, sponsors and other stakeholders. We will use the detailed feedback received to indicate the areas in which our stakeholders consider further guidance should be provided.

2. Reliance on old material

On a similar theme, several respondents noted that issuers and practitioners might be relying on commentary previously published in List! or in the 2010 Notes that has now been ‘withdrawn’, by not being included in the Knowledge Base in the form of a guidance note. This feedback implicitly viewed previous UKLA commentary as still ‘in force’ and suggested the regulatory burden might be altered by our withdrawal of this commentary.

- **Our response:** This feedback is a good illustration of the existence of some confusion over the status of our previously published commentary. The commentary was originally written to be part of a newsletter and was never intended to be formal guidance, so questions such as how long it might remain

valid were not considered at the time of publication. This feedback confirms our belief that it was right to act to clear up any ambiguity, by ensuring that all UKLA technical commentary is in one place and has the status of formal guidance. We also believe it justifies our decision to review and re-design the system used for producing technical commentary. Additionally, through the creation of a referencing system featuring version numbers, it will be possible to provide clarity over the status of each item in the Knowledge Base.

3. *Presentation of the guidance notes*

One stakeholder offered feedback to the effect that the notes should be presented sequentially on a rule-by-rule basis rather than by theme.

- **Our response:** We deliberately chose to organise the material by theme rather than sequentially by rule. We believe that the main advantage of this guidance format is the flexibility it provides. It gives us the ability to address several similar provisions or to contrast provisions. It is also more amenable to real-life illustration and practical examples.

Feedback on specific guidance notes

Procedural Notes

We proposed nine procedural notes. We received very few comments on the six procedural notes that were based on previously published material.

Of the previously published procedural notes, we were asked specific questions in relation to procedural note *UKLA/PN/901.1 – Eligibility process*, noting that certain segments of text were revised in this note. We were also asked specific questions in relation to procedural note *UKLA/PN/904.1 – Public offer prospectus*, noting that sections on transfers from AIM to the Official List and on passporting had been removed.

- **Our response:** Regarding *UKLA/PN/901.1 – Eligibility process*. This note was revised to update headings to specific segments of text and to update segments given the passage of time since the Prospectus Directive was implemented.

Regarding *UKLA/PN/904.1 – Public offer prospectuses – drafting and approval*, the over-arching message in this note remains that issuers should engage with us as early as possible to address the substantive requirements. The revisions to this note were undertaken to more accurately state our practice as opposed to articulating a change in policy.

Furthermore, although we did not receive comments on these procedural notes, we have updated the following notes:

- *UKLA/PN/902.2 – Final Terms*, so that it reflects proposed changes to the UKLA fee policy regarding final terms set out in CP12/28;
- *UKLA/PN/903.1 – Review and approval of documents*, to highlight that changes published in CP12/25 regarding the requirement for a Sponsor Conflicts Declaration will come into effect on 31 December 2012; and

- *UKLA/PN/904.1 – Public offer prospectus – Drafting and approval*, to highlight the provisions set out in Article 24(1) of the PD Regulation and Annex 22 of Appendix 3 of the Prospectus Rules regarding the use of cross-referencing in the summary.

The remaining procedural notes based on previously published material have been published in the form we consulted on.

Of the newly proposed procedural notes, we received comments generally endorsing two of the three newly proposed notes (*UKLA/PN/908.1 – UKLA decision-making and review process* and *UKLA/PN/909.1 – Sponsor firms – ongoing requirements during re-organizations*).

- **Our response:** These notes have been published in the form they were proposed.

However, we received generally adverse feedback on the newly proposed note *UKLA/PN/907.1 – Block listings*. This note was proposed to explain the block-listing regime. This feedback urged us not to proceed with this guidance note.

- **Our response:** The comments received on this note raised issues that we believe warrant further consideration. As such, we are not proceeding with this note and intend to deliberate on the issues raised and consider possible further engagement with stakeholders.

Technical Notes – Eligibility for listing

We received no feedback on this note.

- **Our response:** We have published the note in the form in which we consulted.

Technical Notes – Governance and conduct

We received comments on three of the notes in this section.

We received comments on previously published material related to *UKLA/TN/201.1 – Share buy-back programmes*. The feedback noted that text in the previously published materials referring to the Market Abuse Directive was omitted from the note and that this reference had been useful to stakeholders.

- **Our response:** We do not believe that the reference to the Market Abuse Directive made a point that was suitable for formal guidance. However, we will carefully reflect on the feedback received and we will consider whether we may add to this note in the future. In doing so, we will also consider the European Commission’s review of the Market Abuse Directive. For the time being, we have published this note in the form in which we consulted.

We received comments on two of the newly proposed notes. On *UKLA/TN/206.1 – Approval of circulars*, we were asked what the appropriate test for determining ‘unusual’ would be for purposes of assessing whether a circular requires vetting along with suggested considerations for this determination.

- **Our response:** The feedback we received was useful and we will use the information provided to inform any further guidance we publish in this area. In the meantime, we have published this note in the form in which we consulted.

We also received comment on newly proposed note – *UKLA/TN/208.1 – Long-term incentive schemes* noting that it is not clear whether this note is merely seeking to draw attention to the ‘unusual circumstances’ requirement or whether it is seeking to discourage listed issuers from relying on the exemption: the rule ‘speaks for itself’.

- **Our response:** On careful reflection, we think this note helps practitioners understand the requirements of this provision and we are proceeding with *UKLA/TN/208.1 – Long-term incentive schemes* in the form in which we consulted. However, the feedback received underscores the desire on the part of our stakeholders for more guidance in this area. We will consider whether to add further guidance in the future.

Also, although we did not receive comment on *UKLA/TN/205.1 – Circulation and publication of unapproved documents*, we have revised this note to reflect the changes to the LR that were published in CP12/25. This note now includes a reference to supplementary circulars. All the remaining notes in this category have been published in the form in which we consulted.

Technical Notes – Transactions/Working capital/Profit forecasts and estimates

We received no feedback on these notes.

- **Our response:** Although we received no feedback on the notes in these categories, we have updated several notes to reflect the changes to the LR that were published in CP12/25. These notes are *UKLA/TN/304.1 – Amendments to the terms of a transaction*, *UKLA/TN/305.1 – Hostile takeovers*, *UKLA/TN/306.1 – Reverse takeovers* and *UKLA/TN/308.1 – Related party transactions – Modified requirements for smaller related party transactions*. The notes have been updated to reflect the new supplementary circular provision, the updated responsibility statement in class 1 circulars and the required sponsor confirmation in a smaller related party transaction. All the remaining notes in these categories have been published in the form in which we consulted.

Technical Notes – Closed-ended investment funds

We received feedback on *UKLA/TN/401.1 – Acquiring assets during investment trust rollovers*. The feedback noted that we did not include commentary on reclassified shares in the consultation note.

- **Our response:** We omitted this commentary on the basis of our understanding that reclassified shares had fallen out of use following legislative changes in regulations on investment trusts. However, the feedback received suggests that it would be useful to provide guidance this area. We will follow-up on this topic with a view to add to the Knowledge Base in the future. In the meantime,

we have published this note, as well as the remaining notes in this category, in the form in which we consulted.

Technical Notes – Specialist companies

We received a comment on *UKLA/TN/421.1 – Real Estate Investment Trusts*, suggesting that we should remove the reference to an entry charge, as this had been abolished in the Finance Act 2012.

- Our response: In response to the feedback received, we have revised *UKLA/TN/421.1 – Real Estate Investment Trusts* to remove the reference to an entry charge. The remaining notes in this category have been published in the form in which we consulted.

Technical Notes – Periodic financial information

We received comments on *UKLA/TN/503.1 – Equivalence arrangements for third country issuers*. Respondents noted that text relating to partial exemptions from the requirements in DTR 4, included in previously published materials, was revised in the note presented for consultation.

- Our response: We do not believe that the reference to partial exemptions was suitable for formal guidance. This is in part because we are reviewing the role that ESMA will have in the assessment of equivalence under the DTR. For the time being, we have published this note in the form in which we consulted.

Although we did not receive comment on *UKLA/TN/501.1 – Half-yearly and annual reports*, we have revised this note so that it no longer refers to certain DTR that are not in force.

The remaining notes in this category have been published in the form in which we consulted.

Technical Notes – Regulatory announcements including Inside Information

Several respondents highlighted that previously published commentary relating to the DTRs (notably DTR 2 – Disclosure and control of inside information by issuers) was not included in the notes we consulted on.

- **Our response:** We recognise a proportion of previously published commentary relating to the DTR has not been included in the Knowledge Base. In considering which previously published commentary should be given the status of formal guidance, we had particular regard to areas in which the FSA has issued more recent guidance or information and areas within the previously published commentary that did not obviously provide any specific guidance around a rule but were, for example, more contextual in nature. We will consider, in due course, whether the level of formal guidance in this area remains appropriate and further to, among other things, considerations of the European Commission's review of the Market Abuse Directive. In the meantime, we have published the notes in the form in which we consulted.

Technical Notes – Disclosure of positions held by issuers, investors and management

The comments we received on the notes in this category generally focused on specific areas within each note and requested clarification of the scope and application of specific provisions.

- **Our response:** Although we received comment on *UKLA/TN/540.1 – Transactions by persons discharging managerial responsibilities and their connected persons*, which noted that some previously published text had not been reproduced, we are publishing this note in the form in which we consulted. We believe the revisions undertaken on this note are consistent with the principles of presentation that we articulated in the General themes section above.

We have revised *UKLA/TN/541.1 – Scope and application of vote holder and issuer notification rules* in response to the comments received. The comments were that the reference to LR 14.3.23R and LR 18.4.3R(2) and the discussion regarding the obligation of overseas companies to comply with DTR 5 were omitted from the proposed text, thus suggesting that overseas companies are subject to LR 18.4.3R(2). We acknowledge that this is not the outcome intended. We have therefore revised this note to clarify that we do not expect all GDR issuers to comply with all of DTR 4, 5 and 6.

The comments we received on *UKLA/TN/542.1 – Issuer’s obligations* and *UKLA/TN/543.1 – Shareholder’s obligations* broadly requested that these notes include additional rule references and clarification of the notification sections of these notes. We agree that these notes would be more useful to issuers and practitioners by including the revisions suggested. We have therefore revised these notes accordingly.

In response to comments received, we have revised *UKLA/TN/544.1 – Third country equivalent obligations* to clarify that it is non-EEA issuers whose home member state is the UK who will be subject to the Transparency Directive (TD) requirements unless we deem the domestic regime to be equivalent to the TD. We have also added a link to our website that provides a list the equivalent regimes.

We have revised *UKLA/TN/545.1 – Changes in holdings* to make it clear that where the shareholder has not changed his or her holding, the shareholder’s obligation to disclose arises following the issuer’s total voting rights announcement.

The comments we received on *UKLA/TN/546.1 – Voting rights that are disregarded for notification purposes*, *UKLA/TN/548.1 – Market makers*, *UKLA/TN/549.1 – Asset managers* and *UKLA/TN/550.1 – Trading book exemption* generally sought clarification on the scope of the applicable exemptions. We have revised these notes to provide the requested clarification. We have also identified an administrative error in the Handbook Glossary definition of market makers in relation to the DTR, which will be rectified in due course.

The remaining notes in this category, notably *UKLA/TN/551.1 – Indirect holdings* and *UKLA/TN/547.1 – Aggregation of managed holdings* have been published in the form in which we consulted.

Technical Notes – Public Offers admission to trading and the marketing of securities

We received no feedback on these notes.

- **Our response:** We have published these notes in the form in which we consulted.

Technical Notes – Prospectus content

We received no feedback on these notes, except a comment on our newly proposed note *UKLA/TN/631.1-Prospectus disclosures on credit rating agencies*.

- **Our response:** We have decided not to proceed with *UKLA/TN/631.1 – Prospectus disclosures on credit rating agencies* as this matter is currently subject to ongoing discussions at an ESMA level.

We have revised *UKLA/TN/621.1 – Risk factors*, so that the text accurately reflects the requirements in Annex 22 of the Prospectus Rules. The remaining notes in this category have been published in the form in which we consulted.

Technical Notes – Sponsors

We received a number of favourable responses to our consultation on the proposed technical note *UKLA/TN/708.1 – Sponsor’s obligations on financial position and prospects procedures*. There were some helpful suggestions made on how best to articulate the meaning of ‘established procedures’.

- **Our response:** Further to these responses, we have carefully reviewed the proposed technical note and clarified the meaning of established procedures accordingly. This note, as revised, is now included in the Knowledge Base.

In addition, we have updated notes *UKLA/TN/701.1* to *UKLA/TN/704.1* to reflect that changes to LR 8, published in CP12/25, will come into effect on 31 December 2012.

We have also revised *UKLA/TN/707.1 – Sponsors who are part of an investment management group*, to clarify that this note is relevant where an issuer is listed in the premium listing – closed ended fund category.

The remaining notes in this category have been published in the form in which we consulted.

A summary of the finalised notes and the actions taken on each note can be found at www.fsa.gov.uk/library/policy/final_guides/2012/fg1222.

We invite your comments on this bulletin. You may submit comments by email to primarymarketbulletin@fsa.gov.uk.

Alternatively, you may send comments to:

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